

KEYWORD: Guideline J; Guideline E

DIGEST: A plea of guilty is an admission of the facts underlying the offense and of the crime itself. Applicant's arguments and testimony are in contradiction to her guilty plea. Adverse decision affirmed.

CASENO: 12-03470.a1

DATE: 03/19/2014

DATE: March 19, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-03470
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Charles C. Maddox, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 22, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 20, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 some of her findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is an employee of a Defense contractor. She has held a security clearance since 1989.

In early 2011, Applicant pled guilty to one count of aiding and abetting the making of false statements and one count of fraud in the second degree. She was sentenced to 12 months probation, a \$1,000 fine, and 100 hours of community service.

During a previous employment, Applicant worked for a governmental agency. A position came open, for which a friend of Applicant was suited. Applicant advised the friend that persons with a local residence would get hiring preference. The friend did not live in the local area, so Applicant assisted her in fabricating evidence of a local address, such as creating a false lease for her friend’s use.

In addition, Applicant was the treasurer of a professional association. In that capacity, she had access to a bank account intended for the association. She created an account in the name of the association that was used to launder funds to show that her friend was paying rent for her purported local address. Applicant used the account to pay bills and to make loans for her friend. She put her own money into the account, and her friend’s rent checks were deposited there. Applicant also used the account to built up a college fund for her daughter. As part of her plea, she admitted that she improperly used money from the association while serving as treasurer.

Applicant enjoys an excellent reputation for the quality of her work performance, as well as for her honesty and dependability. After a 2010 investigation into this series of incidents, Applicant cooperated with prosecutorial authorities. The offenses to which she pled guilty were misdemeanors.

The Judge’s Analysis

The Judge concluded that Applicant’s conduct raised concerns under both Guidelines alleged in the SOR. In further concluding that Applicant had failed to mitigate these concerns, the Judge stated that the offenses were not minor and that they cast doubt upon her judgment and trustworthiness. She gave Applicant credit for the favorable evidence in the record, such as her

having held a clearance for many years, her good work references, and her years of public service. However, the Judge described the offenses at issue here as a complicated and fraudulent plan that entailed creating a fake lease, using the association's bank account to launder money, and otherwise assisting in her friend's effort to receive a hiring preference to which the friend was not entitled. The Judge stated that Applicant did not disclose the plan until she was investigated and questioned in 2010, although after that she pled guilty.

Discussion

Applicant challenges the Judge's finding that she had fabricated the lease used by her friend to obtain a hiring preference. She argues that the evidence shows that she had given the lease to her friend earlier and did not know that it would be used to commit fraud. We examine a Judge's findings of fact to see if they are supported by substantial record evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all of the contrary evidence in the record." ISCR Case No. 12-12172 at 3 (App. Bd. Jan. 9, 2014). We note first of all that Applicant pled guilty to the two offenses at issue here, one of which concerned willful false statements, such as the lease. A plea of guilty is an admission not only of the facts underlying the offenses but of the crime itself. *See, e.g.*, ISCR Case No. 11-06937 at 3 (App. Bd. Jan. 10, 2013). Applicant's plea contradicts her testimony at the hearing and her arguments on appeal that she was ignorant of the fraudulent use that her friend would make of the lease. Moreover, a prosecution Sentencing Memorandum, included in Government Exhibit (GE) 2, Answers to Interrogatories, summarized the evidence underlying the offenses, including Applicant's statements to investigators. This exhibit supports the Judge's material findings of security concern.¹ We conclude that these findings are supported by substantial record evidence or constitute reasonable inferences that could be drawn from the evidence.

¹"When [friend] applied for the job position, [Applicant] told [her] that [Applicant] had to pick a [city] resident for the job. [Applicant] knew [friend] did not live in the [city]. In support of her application, [friend] asked [Applicant] for assistance in the process, and [Applicant] gave [friend] a list of documents she needed to falsely show residency, including, among others, a lease and rent payments. As to the lease, [Applicant] pulled a sample lease off the Internet and gave it to [friend]. Pursuant to [Applicant's] suggestion, [friend] used the name of someone with whom [Applicant] had done business as the purported landlord and his company as the purported owner of the property . . . When [Applicant] was interviewed . . . she said she took the steps regarding [friend] . . . because she wanted to hire [friend]. Further, she said that, beyond using the [association bank account] to wash through the false rent payments by [friend], she often used the account for personal purposes. She admitted making from that account a \$2,000 payment to her husband's credit union, a \$5,000 payment to her own [bank] account, a \$4,000 payment to [credit card service], and a \$2,000 payment to a co-worker . . . [Applicant] agreed that her treatment of the [association bank account] involved improper accounting procedures, regardless of whether she had the intent to repay the money at some later date. She also acknowledged that she improperly advanced herself \$7,000 from this account, although she claimed she ultimately paid back this money." GE 2, Sentencing Memorandum, at 3-5.

Applicant cites to evidence favorable to her, such as her good employment record, in support of her argument that the Judge erred in denying her a clearance. The Judge made fairly detailed findings about this evidence and discussed it in her analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10178 at 2-3 (App. Bd. Aug. 29, 2013). Applicant’s argument on appeal consists basically of a disagreement with the Judge’s weighing of the evidence and with the Judge’s resolution of conflicts within that evidence. Applicant’s arguments are not sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-12165 at 4 (App. Bd. Jan. 29, 2014). We are required to defer to a Judge’s credibility determinations. Directive ¶E3.1.32.1. *See* ISCR Case No. 11-11059 at 4 (App. Bd. Oct. 15, 2013). We find no reason to disturb the Judge’s credibility determination in this case or of her resolution of evidentiary conflicts.

In challenging the Judge’s application of the mitigating conditions, Applicant contends that the Judge erred in stating that she had not disclosed her plan until she was investigated in 2010. Applicant points to evidence that she had tried to speak with officials in her office previously but was rebuffed because of the ongoing investigation. Applicant’s contention that she wanted to discuss her misconduct earlier than 2010 does not undermine evidence that she failed to come forward until after an investigation had been launched. Even if the Judge had made findings in precise accordance with Applicant’s brief, it is not likely that she would have issued a different decision.

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 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