

KEYWORD: Guideline E

DIGEST: Applicant's divorce decree included a custody agreement. In 2011, he submitted an amendment to the decree granting him custody of a child from that marriage. An investigation revealed the amendment was not a legitimate court document. His ex-wife's signature on that document was forged and the judge's signature was copied and pasted from the original decree. In 2016, he was charged under the Uniform Code of Military Justice with making false official statements on DoD forms pertaining to pay entitlements and larceny. He requested a discharge in lieu of trial by court-martial, which was approved. He is paying restitution and has already paid about \$20,000. Adverse decision affirmed.

CASENO: 18-00173.a1

DATE: 03/01/2019

DATE: March 1, 2019

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In Re: \_\_\_\_\_ )  
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Applicant for Security Clearance )  
\_\_\_\_\_  
ISCR Case No. 18-00173

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## **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 March 5, 2018, 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). Department Counsel requested a hearing. On October 4, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant, who is 34 years old, has been working for his current employer since mid-2017. He served in the military for about eleven years and received a discharge under other than honorable conditions in 2017. He has been divorced twice and has four children. While serving in the military overseas, he claimed basic allowance for housing (BAH) and family separation allowance (FSA) on behalf of his children in the United States. He did not have the physical or legal custody necessary to claim those entitlements. An audit indicated that his paperwork may have been altered to justify the entitlements. The resulting loss was over \$47,000.

Applicant's first divorce decree included a custody agreement. In 2011, he submitted an amendment to the decree granting him custody of a child from that marriage. An investigation revealed the amendment was not a legitimate court document. His ex-wife's signature on that document was forged and the judge's signature was copied and pasted from the original decree. In 2016, he was charged under the Uniform Code of Military Justice with making false official statements on DoD forms pertaining to pay entitlements and larceny. He requested a discharge in lieu of trial by court-martial, which was approved. He is paying restitution and has already paid about \$20,000.

Applicant has consistently claimed he did not know the amendment was fake. He asserted that his wife asked him to take custody of the child, that he responded that he would not do so unless a court approved it, and that she provided him the amendment, which he assumed was legitimate. His first wife has questionable character and he believes she had someone forge the document. The child never moved to his locations overseas or in the United States. He claimed he never intended to accept pay to which he was not entitled and that his deployments precluded him from assuming custody of the child. He established that he made monthly payments of over \$700 from 2012 to 2014 to a joint account with his first wife from which she made withdrawals. During a background interview in 2017, Applicant stated:

[T]he military did not find him at fault for filing the incorrect documents, but he had to repay the amount that he should not have received. He stated that he received an honorable discharge in March 2017, and he chose not to reenlist. When confronted, he admitted that he received a discharge in lieu of trial by court-martial, but he did

not believe that he received an other than honorable conditions discharge. . . . Applicant testified that he did not tell the investigator that he received an honorable discharge; he told the investigator that he did not receive a dishonorable discharge. [Decision at 3-4.]

Applicant submitted character letters attesting to his excellent performance of duties. In addition to other positive traits, he is praised for his trustworthiness, reliability, and integrity.

### **The Judge's Analysis**

Considering all the evidence, including that Applicant's child never came to live with him and he accepted a discharge under other than honorable conditions in lieu of court-martial, substantial evidence exists that he knew the amendment was a fake when he submitted it, intentionally submitted false pay-entitlement documents, and knowingly received pay to which he was not entitled. His testimony and claims of innocence were also false.

### **Discussion**

In his appeal brief, Applicant contends that he acted in good-faith in believing his ex-wife followed proper procedures in obtaining the document in question and that he did not know that document was a fake. The Judge analyzed this issue in detail. While Applicant is challenging the Judge's conclusions regarding his knowledge about the legitimacy of the document and his state of mind in submitting the document to qualify for BAH and FSA, he does not dispute any of the Judge's specific findings of fact supporting those conclusions. Knowledge and intent may be proven by circumstantial evidence. *See, e.g.*, ISCR Case No. 17-0107 at 2-3 (App. Bd. Dec. 10, 2018). Moreover, we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. From our review of the record, the Judge's material findings and conclusions about Applicant's alleged conduct are based on substantial record evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. In those arguments, for example, Applicant highlights his military service and his character evidence. Those arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3 (App. Bd. Aug. 30, 2018).

Applicant has not established that the Judge committed any harmful errors. The Judge examined the relevant evidence 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: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board