

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant contends that her SCA omissions were not deliberate. For example, she claims she had no clue what was on her credit report until she was interviewed by an investigator. We note that Applicant has not challenged any of the Judge’s specific findings of fact pertaining to the falsification allegations. It also merits noting that circumstantial evidence may establish an applicant’s intent or state of mind when the alleged falsification occurred. Additionally, we are required to give deference to a Judge’s credibility determinations. From our review of the record, the Judge’s material findings about the falsification allegations are based on substantial record evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. Applicant failed to establish that the Judge erred in concluding that she falsified her SCA. Adverse decision affirmed. Adverse decision affirmed.

CASENO: 16-00791.a1

DATE: 03/06/2019

DATE: March 6, 2019

In Re:)	
)	
-----)	ISCR Case No. 16-00791
)	
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 20, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), 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 decision on the written record. On December 11, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 and Analysis

Applicant, who is 46 years old, has been working for a defense contractor since 2013. While experiencing some gaps in employment, she has been working for defense contractors since 1992. She was granted a security clearance in 2007.

The SOR alleges that Applicant received a Chapter 7 bankruptcy discharge in 2005 and had 12 delinquent debts totaling about \$12,000. On her 2014 security clearance application (SCA), she failed to list her delinquent debts and disclose criminal arrests and citations. She documented no efforts to address her debts. She attributed her bankruptcy to her divorce in 1997, but this is attenuated. She provided no character references or documentation of financial counseling.

In a footnote, the Judge noted that Applicant thought the SCA question pertaining to felony charges applied only to those occurring within the last seven years. While she provided no corroboration for her claim to have disclosed the felony charge to an investigator in 2007, the age of the criminal charge in question (occurring nearly 25 years before her SCA submission) renders the allegation of little security significance. Her explanations for omissions of her financial problems and other criminal charges are less credible.

Applicant has an extensive history of financial problems and did not provide documentation of efforts to resolve those problems. Similarly, the Government established cases for disqualification under Guidelines J and E. Her SOR response does not contain a thorough explanation for her criminal conduct or SCA omissions.

Discussion

Regarding the falsification allegations, Applicant contends that her SCA omissions were not deliberate. For example, she claims she had no clue what was on her credit report until she was interviewed by an investigator. We note that Applicant has not challenged any of the Judge’s specific findings of fact pertaining to the falsification allegations. It also merits noting that circumstantial evidence may establish an applicant’s intent or state of mind when the alleged falsification occurred. *See, e.g.*, ISCR Case No. 12-05850 at 4 (App. Bd. Apr. 12, 2013).

Additionally, we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 16-01077 at 3 (App. Bd. Apr. 25, 2018). From our review of the record, the Judge's material findings about the falsification allegations are based on substantial record evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant failed to establish that the Judge erred in concluding that she falsified her SCA.

Applicant has provided detailed explanations pertaining to her financial problems and criminal charges. These arguments amount to a disagreement with the Judges weighing of the evidence and are not 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 also provided us with contact information for her doctor, supervisors, and other character references. However, the Appeal Board cannot consider new evidence (Directive ¶ E3.1.29) and has no authority to interview witnesses, conduct investigations, or make findings of fact. *See, e.g.*, ISCR Case No. 16-03072 at 2 (App. Bd. Mar. 7, 2018).

Applicant has failed to establish that the Judge committed any harmful error. 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 F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board