

KEYWORD: Guideline F

DIGEST: In his 2017 security clearance application (SCA), Applicant disclosed that he was arrested for misapplying entrusted Federal property in 2015. The following year he pled guilty to that misdemeanor offense and paid a fine. He admitted that, while employed as a letter carrier for the U.S. Postal Service, he improperly dumped flyers and newsletters in a dumpster. He resigned from that job under adverse circumstances. Adverse decision affirmed.

CASENO: 18-01480.a1

DATE: 04/03/2019

DATE: April 3, 2019

In Re:

Applicant for Security Clearance

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) ISCR Case No. 18-01480
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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 June 11, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) 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 January 4, 2019, after the hearing, Administrative Judge Robert J. Kilmartin 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 served in the military in Iraq, was honorably discharged from active duty, and continues to serve in the Reserves. He has experienced periods of unemployment from 2009 to 2016. He has worked for a Federal contractor since 2016.

In his 2017 security clearance application (SCA), Applicant disclosed that he was arrested for misapplying entrusted Federal property in 2015. The following year he pled guilty to that misdemeanor offense and paid a fine. He admitted that, while employed as a letter carrier for the U.S. Postal Service, he improperly dumped flyers and newsletters in a dumpster. He resigned from that job under adverse circumstances.

Applicant admitted the SOR allegation that he had a child support arrearage of approximately \$36,500. His child support payments had been sporadic due to chronic unemployment. Starting in 2006, his pay was garnished for the arrearage. He provided a one-page payment history reflecting payments every two weeks of \$425 in 2017 and \$506 in 2018. His last reported payment was made during the month he responded to the File of Relevant Material (FORM). He also admitted the SOR allegation that he had a automobile loan past-due for about \$570, with a balance of about \$7,100. He gave the vehicle to a friend who agreed to take over the payments. The friend reneged on the deal. Applicant provided a letter from the auto-loan creditor reflecting he verbally authorized a payment of \$291 in 2018. He was supposed to continue making monthly payments on that loan, but provided no documentation of further payments. He provided character letters attesting to his integrity and trustworthiness.

The Judge found in favor of Applicant on a small debt that he denied and against him on the remaining SOR allegations. He had a fiduciary responsibility to deliver the mail. Insufficient time has passed from his misdemeanor mail-handling offense to conclude further misconduct will not likely happen again. He bears responsibility for his forced resignation due to his misconduct. He made only sporadic child support payments before a court order. It is unclear what child support payments he made before 2017 and why he was unemployed frequently. He only produced proof of one payment toward the auto loan. His alleged debts are recent and ongoing. He has not shown that he acted responsibly under the circumstances.

Discussion

In his appeal brief, Applicant provides documents and details about the SOR allegations that were not previously presented to the Judge for consideration.¹ Such matters constitute new evidence that the Appeal Board is prohibited from receiving or considering. Directive ¶ E3.1.29.

Applicant argues that he has regularly made support payments to his children and believes he is honoring his legal obligations, that he has acted responsibly in addressing his auto loan, and that he was subjected to racial slurs on his mail route that led to the one-time lapse of judgment in delivering newspaper flyers. In a background interview in the record, Applicant indicated that he was subjected to racial slurs on his mail route and reported that conduct to his supervisors without any follow-up action being taken. FORM Item 4. A Judge is presumed to have considered all of the evidence in the record, and Applicant has not rebutted that presumption in this case. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). Notwithstanding that presumption, it was error for the Judge not to address explicitly Applicant’s explanation for the mail-handling offense, even if he found it not credible. Given the adverse findings under Guideline F, the Judge’s failure to discuss Applicant’s explanation was harmless error. Applicant also states that he is extremely sorry for his work misconduct and made a promise never to do such a thing ever again. He maintains that, since his misdemeanor offense, he has “grown tremendously in character and matured in disposition.” Appeal Brief at 3. His arguments amount to a disagreement with the Judge’s weighing of the evidence and are not sufficient to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

Applicant has not identified any harmful error in the Judge’s decision. 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, Encl. 2, App A. ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

¹ In his appeal brief, Applicant acknowledges that he previously “told only part of the story” and “now is [providing] the entire story and entire truth.” Appeal Brief at 3.

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