

KEYWORD: Guideline E; Guideline F

DIGEST: A Judge is presumed to be unbiased, and a party who asserts otherwise has a heavy burden of persuasion on appeal. We find nothing in the record, particularly in the Judge's conduct of the hearing and in her written decision, that would likely convince a reasonable person that she lacked the requisite impartiality. Applicant's disagreement with the Judge's adverse rulings is not sufficient to support a claim of bias. Adverse decision affirmed.

CASENO: 18-01564.a1

DATE: 05/30/2019

DATE: May 30, 2019

_____)	
In Re:)	
)	
-----)	ISCR Case No. 18-01564
)	
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 June 26, 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 hearing. On February 22, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Erin C. Hogan 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 was biased against him; whether the Judge erred in finding that his omissions from his security clearance application (SCA) were deliberate; 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

Born overseas, Applicant became a U.S. citizen in the late 1980s. He served in the U.S. military, both on active duty and in the National Guard. Applicant studied for a master’s degree but did not complete the program. However, he received an M.D. degree, although he has never practiced medicine.

Applicant’s SOR lists numerous delinquent debts, for student loans (totaling nearly \$170,000), credit cards, a timeshare, telecommunication services, etc. Applicant also had three judgments entered against him, for about \$3,800, \$4,900, and \$930. Applicant’s financial problems began when his wife filed for divorce while he was in medical school. He worked for a while at a job that paid him about \$145,000 annually, but he was laid off when the mission ended.

Applicant purchased a house using funds he had earned while employed, and it is worth about \$200,000. He stayed with his mother to care for her during an illness, for which he received a small amount of compensation, and currently tries to earn money by selling merchandise. He testified that he lives on less than \$10,000 a year. He has made some payments toward his student loans. He has not received financial counseling. He provided evidence that the statute of limitations has run on most of his student loans.

When completing his SCA, Applicant did not disclose the judgments against him or his other delinquent debts. He testified that he was not sure why he did not list his judgments, although it may have been due to a mistake or to failing to understand the meaning of “judgment.” However, he admitted that he attended a trial regarding one of the judgments listed in the SOR. He also testified that he did not know why he did not disclose his other delinquencies.

Applicant presented certificates and awards that he had received while in the military, letters of reference, and certificates of appreciation. He does not believe that his financial problems raise a security concern. He cites to his honorable military service and his work as a contract employee. He believes that his having previously been granted a security clearance shows that he should receive

a favorable adjudication in the case before us. He intends to pay his debts once he finds a well-paying job.

The Judge's Analysis

The Judge concluded that Applicant's financial problems were ongoing, that he had not demonstrated responsible action in regard to his debts, and that he had not made a good-faith effort to pay or resolve his debts. Concerning Applicant's SCA omissions, the Judge stated that his explanations therefor were not credible. He admitted, for example, that he had been aware of the judgments and of the fact that he had been living off credit card debt while unemployed. Though she noted Applicant's military service, his support for the U.S. as a contract employee, and his support for his ailing mother, the Judge concluded that he had not demonstrated a track record of debt resolution. She also concluded that Applicant's SCA omissions undermined his case for a favorable decision.

Discussion

Much of Applicant's brief consists of assertions from outside the record, which we cannot consider. Directive ¶ E3.1.29. He argues that the Judge "[went] out of [her] way to find anything that insults the person's integrity and character to link it to the finance and support [her adverse decision]." Appeal Brief at 1. A Judge is presumed to be unbiased, and a party who asserts otherwise has a heavy burden of persuasion on appeal. *See, e.g.*, ISCR Case No. 17-02391 at 2 (App. Bd. Aug. 7, 2018). We find nothing in the record, particularly in the Judge's conduct of the hearing and in her written decision, that would likely convince a reasonable person that she lacked the requisite impartiality. Applicant's disagreement with the Judge's adverse rulings is not sufficient to support a claim of bias. *See, e.g.*, ISCR Case No. 15-05047 at 3 (App. Bd. Nov. 8, 2017).

Applicant denies that he deliberately falsified his SCA. However, evidence regarding Applicant's educational attainments, the clarity of the questions at issue, and his awareness of the extent of his financial problems support the challenged finding. We also note the Judge's adverse credibility determination, to which we give deference. Directive ¶ E3.1.32.1. We conclude that the challenged finding is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record."¹ *See* ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018).

Applicant cites to his military record, his support for U.S. objectives as a contractor, and his having held a clearance previously without incident or concern. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019). Applicant's prior good security record does not undermine

¹*See also* the following: Applicant "was asked if he had any judgments entered against him in the last seven years. [Applicant] provided he has. [He] was asked the reason he did not report this on his security questionnaire. [He] provided that he did not report this judgment or any other financial delinquency on his security questionnaire because they are not important to him." Government Exhibit 6, Clearance Interview Summary, at 10.

the Judge’s evaluation of the concerns arising from his financial problems and deliberate omissions. Even those with good prior records can encounter circumstances in which their judgment and reliability might be brought into question. *See, e.g.*, ISCR Case No. 17-02599 at 3 (App. Bd. Jan. 18, 2019).

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.”

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