

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant denies that his SCA omissions were deliberate, arguing that there were multiple windows open on his computer screen at the time he completed his SCA and that he became confused. When an applicant denies that a false statement was intentional, the Judge should evaluate his mens rea in light of the entirety of the record evidence. Adverse decision is affirmed.

CASE NO: 19-01545.a1

DATE: 01/23/2020

DATE: January 23, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-01545
)	
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 July 17, 2019, 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 November 18, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 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

Applicant’s SOR alleged that he had ten delinquent consumer debts, a medical debt, and eight delinquent student loans. The total amount of Applicant’s delinquent debts was about \$79,000. He attributed his financial problems to four months of unemployment, medical expenses, and a divorce. He has made some payments toward satisfying the student loans and has entered into a rehabilitation plan for them. The Judge noted, however, that these debts became delinquent in 2014 but Applicant did not begin to address them until 2019. Applicant has been working with a debt resolution company that successfully disputed two of the SOR debts. He claims that he inherited some money from his father which he will use to pay off his debts, although he did not state the actual amount.

When he completed his SCA, Applicant did not disclose any of his delinquent debts. Applicant admitted with an explanation in his SOR Response that he answered “no” to the question regarding financial problems. In his Response to the File of Relevant Material (FORM), Applicant stated that he thought the interviewer was asking about his ability to pay his current bills. Applicant acknowledged that he knew about the majority of his debts and did not know why he answered the SCA question as he did. He stated that he had been rushed to complete the SCA.

The Judge’s Analysis

The Judge entered favorable findings about the two debts that had been removed from Applicant’s credit report. She arrived at the opposite conclusion regarding the remainder, on the ground that Applicant had not demonstrated resolution of any of them. She noted his payments toward his student loans. However, she also noted that he did not begin to address them until after his security clearance interview, which placed him on notice that his clearance was in jeopardy. Though noting circumstances beyond Applicant’s control that affected his debts, she concluded that he had not demonstrated responsible action in regard to them.

Concerning the SCA omissions alleged under Guideline E, the Judge cited to Applicant's explanation that he had been rushed and made an honest mistake. She stated, however, that Applicant had answered other questions on the SCA in some detail, and she cited to his initial denial of financial problems during his interview, finding Applicant's explanation that he misunderstood the investigator's question to be lacking in credibility. She found that Applicant had deliberately omitted material information from his SCA and that he had made no good-faith effort to correct the omissions before he was confronted with them.

Discussion

Applicant's appeal brief includes information from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant denies that his SCA omissions were deliberate, arguing that there were multiple windows open on his computer screen at the time he completed his SCA and that he became confused. When an applicant denies that a false statement was intentional, the Judge should evaluate his *mens rea* in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

The explanation Applicant provided in his appeal brief, in addition to being new evidence, is different from, if not inconsistent with, his FORM Response described above and with his Answer to the SOR, in which he stated simply that his denials of financial problems were "not what I expected to answer." We note the Judge's finding that Applicant apparently took care elsewhere in the SCA to provide detailed information. We also note evidence that Applicant attended college and that he has prior experience in completing an SCA. All in all, the challenged finding is supported by substantial evidence and is sustainable. *See, e.g.*, ISCR Case No. 18-01564 at 3 (App. Bd. May 30, 2019).

Applicant cites to favorable evidence, such as his efforts at paying his student loans and his rehabilitation program for the loans; his having hired a debt resolution company; his successful dispute of two debts; his explanation for his initial denial to the interviewer of financial problems, and his having held a clearance for many years without incident or concern. These were all matters that the Judge was required to consider, along with all the other evidence in the record. However, a Judge is not expected explicitly to discuss all aspects of an applicant's record, which would be an impossibility. *See, e.g.*, ISCR Case No. 16-02243 at 3 (App. Bd. Nov. 30, 2018). Applicant's arguments on appeal are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they enough 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. 18-01482 at 2 (App. Bd. Sep. 6, 2019).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). Regarding Applicant's deliberate omissions, the Directive states that refusal to provide truthful answers during the security clearance process "will normally result in an unfavorable

national security eligibility determination [or] security clearance action[.]” Directive, Encl. 2, App. A ¶ 15. *See also* ISCR Case No. 15-08255 at 3 (App. Bd. Aug. 22, 2017). The Judge’s adverse 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 Y. Ra’anan

Michael Y. 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