



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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KEYWORD: Guideline E; F

DIGEST: Applicant argues that workplace issues are not a reason for denying a security clearance. This argument is frivolous. It is irrefutable that questionable conduct in the workplace can raise security-significant issues. Questionable workplace conduct can reflect negatively on an applicant’s reliability, trustworthiness, and judgment; can demonstrate an unwillingness to comply with rules and regulations; and can raise questions about an individual’s ability to protect classified or sensitive information. Adverse decision is affirmed.

CASE NO: 19-02399.a1

DATE: 11/30/2021

Date: November 30, 2021

In the matter of:)	
)	
-----)	ISCR Case No. 19-02399
)	
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 September 11, 2020, 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 DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 4, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 against Applicant on matters considered in a prior adjudication, whether the Judge erred in finding against Applicant on workplace issues, whether the Judge erred in finding against Applicant on the falsification allegations, and whether the decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Under Guideline F, the SOR alleges that Applicant had four delinquent debts totaling over \$2,000 and the IRS garnished his wages in 2018. The Judge found in favor of Applicant on the alleged debts and against him on the garnishment. The SOR contains 21 Guideline E allegations. These are summarized as follows: (1) Applicant was issued four written warnings for poor performance by Company A from about 2008 to 2010 and was terminated from that employment for unsatisfactory performance in about 2010, (2) he was terminated from the employment of Company B for poor performance in about 2010, (3) he was issued a written warning by Company C for failure to protect personally identifiable information (PII) in about 2012, (4) he was terminated from the employment of Company D in about 2014 and a program manager indicated he had poor performance issues, (5) he falsified three responses on a security clearance application (SCA) in 2015, (6) he failed to disclose information during interviews with DoD investigators in 2011, 2012, and 2014, and twice in 2015, (7) he was suspended by Company C in 2015 and had failed to perform certain tasks, (8) he was terminated from the employment of Company B again in about 2018 for failing to complete training, (9) he was issued a written warning by Company E for failing to provide requested information about his tax issues in 2018 and was terminated from that employment for poor performance in 2018, and (10) he knowingly failed to disclose information in responding to DOHA interrogatories in about 2020. The Judge found in favor of Applicant on Guideline E allegations involving the failure to disclose information during a DoD interview in 2015 and the written warning and termination pertaining to Company E (Item 9 above). The Judge found against Applicant on the other Guideline E allegations. The Judge’s favorable findings were not raised as an issue on appeal.

Extension Request

In his appeal brief, Applicant asks for a third extension of time for submitting the brief. Regarding this issue, it is important to note that an applicant is entitled to submit only one appeal brief. *See, e.g.*, ISCR Case No. 16-03393 at 2 (App. Bd. Aug. 6, 2018). Having submitted his brief, his request for another extension is moot.

New Evidence

Applicant’s brief contains documents that are not included in the record. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Prior Favorable Security Clearance Adjudication

Applicant notes that he was granted a security clearance in 2010. He argues that any conduct that was considered in the prior adjudication is outside the scope of this adjudication. In other words, he is contending that the Government is precluded from reconsidering conduct that was examined in a prior adjudication. This contention lacks merit. The Board has previously held that there is no right to a security clearance, nor is there a presumption in favor of continuing or granting a security clearance. The Government has the right to reconsider the security significance of past conduct in light of more recent conduct having a negative security significance. *See, e.g.*, ISCR Case No. 18-02586 at 3 (App. Bd. Sep. 9, 2019). In this case, the Judge committed no error in considering Applicant's alleged conduct that occurred before his security clearance was granted.

Workplace Issues

Applicant argues that workplace issues are not a reason for denying a security clearance. This argument is frivolous. It is irrefutable that questionable conduct in the workplace can raise security-significant issues. Questionable workplace conduct can reflect negatively on an applicant's reliability, trustworthiness, and judgment; can demonstrate an unwillingness to comply with rules and regulations; and can raise questions about an individual's ability to protect classified or sensitive information. *See* Directive, Encl. 2, App. A ¶ 15 (“*The Concern*” paragraph for Guideline E). Of note, certain adjudicative guidelines, such as Guideline K (Handling Protected Information) and Guideline M (Use of Information Technology), and certain disqualifying conditions, such as alcohol-related incidents at work (Directive, Encl. 2, App. A ¶ 22(b)), are focused on security-significant issues arising in the workplace.

Falsification Allegations

Applicant argues he did not disclose certain employment in responding to Section 13A of his SCA because he was self-employed as a contractor. He asserts that section only requested information pertaining to IRS Form W-2 employee services and does not extend to IRS Form 1099 contractor services. He refers to his omissions as a misinterpretation of Section 13A. The plain language of Section 13A does not support Applicant's argument. Section 13A states in part, “List all of your employment activities, including unemployment and self-employment, beginning with the present and working back 10 years.” Government Exhibit (GE) 1 at 10 (emphasis added). Applicant's argument is also undercut by him having served as a background investigator and personnel security specialist for about 15 years. Having worked in the security field for so long, his argument is difficult to fathom. Section 13A makes clear all employment activities must be disclosed. The Judge did not err by relying on the plain language of Section 13A in analyzing Applicant's answers.

In general, Applicant contends that he did not have the intent to commit any falsifications. Record evidence establishes that Applicant did not disclose required negative information (*i.e.*, that employers issued him written warnings about his performance or terminated his employment) in his SCA, background interviews, and DOHA interrogatories. It is well established that an applicant's intent or state of mind can be established by circumstantial evidence. *See, e.g.*, ISCR Case No. 01-20700 at 4 (App. Bd. Dec. 19, 2002). In this case, Applicant's multiple omissions

weaken any argument that his failure to disclose the required information was the result of mistake, oversight, or lack of recall. *See, e.g.*, ISCR Case No. 19-02345 at 3 (App. Bd. Feb. 8, 2021). Furthermore, the Judge concluded that Applicant lacked credibility. The Appeal Board is required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Based on our review of the record, we find no reason why we should not give deference to the Judge's credibility determination in this case. The Judge's conclusions that Applicant deliberately falsified or omitted required information during the security clearance process were reasonable inferences drawn from the record evidence.

Garnishment Allegation

In responding to the SOR, Applicant admitted that the IRS garnished his pay in 2018. The Judge found that he owes over \$15,000 in Federal income taxes because he incorrectly filed his tax returns for 2011-2013 as a 1099 contractor. The garnishment was terminated when Applicant reached an agreement with the IRS on a repayment plan. Since then, Applicant has been making payments under that plan. The current balance of this tax debt is unknown and, as of March 2021, he was one month behind on his installment payments. Decision at 2-3. In his brief, Applicant basically argues the garnishment was cancelled and the existence of the payment plan resolves this issue. We find no basis to conclude the Judge erred in finding against Applicant on this long-outstanding indebtedness. It is well-established that, even if an applicant has paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017).

Conclusions and Weighing of the Evidence

Applicant challenges the Judge's conclusion that he was fired from Company C for falsely reporting he contacted a subject of an investigation when he did not do so. This assertion of error has some merit. The Judge correctly found that Company C suspended Applicant in 2015 and was moving to terminate him for various work performance issues. These issues also caused the U.S. Office of Personnel Management to conduct an audit of this work. In his analysis, the Judge indicated that Applicant was fired from this job. In his appeal brief, Applicant correctly contends there is no evidence to support that he was fired from that job and asserts he resigned from it. At the hearing, he testified that he thought he resigned from Company C. Tr. at 38-39. Even though the Judge erred in this conclusion, it was harmless because Company C was moving to terminate him. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020) (an error is harmless if it did not likely affect the outcome of the case).

Applicant argues the Judge did not consider evidence presented at the hearing. However, none of his arguments are sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 19-03344 at 3 (App. Bd. Dec. 21, 2020). Applicant also highlights certain mitigating evidence in arguing he should be granted a security clearance. With the exception of the Judge's harmless error regarding Applicant's firing from

Company C, none of Applicant’s arguments are 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. 19-01431 at 4 (App. Bd. Mar. 31, 2020).

Conclusion

Applicant has failed to establish 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 the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 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