

KEYWORD: Guideline F, Guideline E

DIGEST: Applicant’s brief essentially repeats claims he made below that the Judge discounted. Applicant’s denial of prior knowledge of the judgment before completing the SCA is not conclusive evidence. Such prior knowledge could be proven by circumstantial evidence. Besides not listing the judgment on his SCA, Applicant also did not disclose on that document, as required, the voluntary repossession of his car in 2017 and his other debts that were charged off, placed for collection, or over 120 days delinquent within the last seven years. Those multiple omissions undercut any argument that his failure to disclose the judgment was the result of mistake, oversight, or lack of recall. A court record reflects that two summons for the court proceeding had been served before a judgment was entered against both Applicant and the roommate in July 2018, which was about four months before Applicant completed the SCA. Adverse Decision Affirmed.

CASE NO: 19-02345.a1

DATE: 02/08/2021

DATE: February 8, 2021

In Re:	)	
	)	
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	)	
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 27, 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 hearing. On November 2, 2020, 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 issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings regarding the Guideline F allegations were not raised as an issue on appeal. Consistent with the following, we affirm.

### **The Judge’s Pertinent Findings of Fact and Analysis**

Applicant, who is in his 20s, has worked for a defense contractor for about eight years. Over the years, Applicant incurred nine delinquent debts totaling about \$45,000, including a judgment for a car loan totaling about \$10,900. Applicant cosigned the car loan for his roommate who defaulted on it, which led to the creditor obtaining a judgment against both Applicant and the roommate in July 2018. Since August 2020, the roommate has been paying this debt through a garnishment.

In November 2018, Applicant completed a security clearance application (SCA) in which he did not list the judgment in response to a pertinent question. The Judge specifically found:

Applicant contends that the omission was unintentional, as he did not know about this judgment until after he completed the security clearance application. (Tr. 60) Applicant and the primary borrower on the loan were roommates when the judgment was filed. (Tr. 61) The initial [court] pleading lists both gentlemen as codefendants. (GE [Government Exhibit] 4) The court records indicate that the court issued two summons in April 2018 and that service was executed on two individuals on June 20, 2018 (GE 4 at 3) [Decision at 3.]

Applicant’s contention that he was unaware that the primary borrower was behind on the debt or that the debt collection process legal proceedings had been initiated is not credible in light of the court records showing service of process as well as the fact that he and the primary borrower were roommates. Applicant’s resolution of his financial problems is insufficient to outweigh that security concerns generated by his failure to disclose a judgment as required on his SCA.

### **Discussion**

In his appeal brief, Applicant contends the evidence presented at the hearing does not support the Judge’s unfavorable clearance decision. He argues that he “did not recall” the judgment for the car loan when he completed his SCA, that his roommate did not disclose to him information about

the car loan being in default, and that having a roommate is not proof that he was aware of every decision the roommate made regarding the car or its loan.<sup>1</sup> Appeal Brief at 1.

Applicant's brief essentially repeats claims he made below that the Judge discounted. Applicant's denial of prior knowledge of the judgment before completing the SCA is not conclusive evidence. *See, e.g.*, ISCR Case No. 02-06926 at 5 (App. Bd. Nov. 25, 2003). Such prior knowledge could be proven by circumstantial evidence. *See, e.g.*, ISCR Case No. 18-02592 at 4 (App. Bd. Jan. 6, 2021). Besides not listing the judgment on his SCA, Applicant also did not disclose on that document, as required, the voluntary repossession of his car in 2017 and his other debts that were charged off, placed for collection, or over 120 days delinquent within the last seven years. GE 1-3 and 5. Those multiple omissions undercut any argument that his failure to disclose the judgment was the result of mistake, oversight, or lack of recall. A court record (GE 4 at 3) reflects that two summons for the court proceeding had been served before a judgment was entered against both Applicant and the roommate in July 2018, which was about four months before Applicant completed the SCA. Moreover, it was not unreasonable for a Judge to infer that roommates would discuss a legal action being brought against both of them. Furthermore, the Directive requires us to defer to a Judge's credibility determination. Directive ¶ E3.1.32.1. From our review of the record, the Judge's material findings and conclusions regarding the SCA falsification are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019). None of Applicant's arguments are sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02592 at 5.

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."

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<sup>1</sup> Applicant's claim on appeal that he "did not recall" the judgment prior to completing the SCA is different from his hearing testimony that, as the Judge found, he had no knowledge of the judgment prior to completing the SCA. Of note, an individual's claim that he or she "did not recall" a matter implies that he or she may have had prior knowledge of that matter. At the hearing, the Judge requested Applicant submit a letter from the roommate "explaining the situation with the repossessed vehicle with the judgment." Tr. at 79. In a post-hearing submission, Applicant submitted a letter from the roommate that discusses the status of the garnishment action being taken against him; however, it neither addresses nor corroborates Applicant's claims that, prior to submission of the SCA, he and his roommate did not discuss the court proceeding or his roommate did not inform him of the default on the car loan. Applicant's Exhibit I.

**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