

KEYWORD: Guideline D; Guideline E; Guideline F

DIGEST: As provided in Directive ¶ E3.1.32.1, the Board gives deference to the Judge’s credibility determinations, including his conclusion that Applicant’s explanation that he did not know that the accounts had been referred for collection was implausible and unconvincing. From our review of the record, the Judge’s material findings and conclusions regarding Applicant’s alleged SCA falsification for failing to disclose his financial delinquencies are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Adverse decision affirmed.

CASE NO: 20-01374.a1

DATE: 05/17/2021

DATE: May 17, 2021

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In Re:)	
-----)	ISCR Case No. 20-01374
)	
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 October 16, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline D (Sexual Behavior), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 10, 2021, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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’s adverse findings and conclusions under Guideline E are supported by record evidence and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge found in favor of the Applicant on the Guideline D allegations, one of the five Guideline E allegations, and two of the 17 Guideline F allegations. The Judge’s favorable findings 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 mid-30s, served in the military for about 13 years. He received an honorable discharge but was ineligible to reenlist due to high-year tenure rules. Since his military discharge, he has earned an associate’s degree and has worked for various employers, including as a probationary employee of a Federal agency. He is married and has two minor children from a prior marriage and two adult stepchildren.

While in the military, Applicant was awarded nonjudicial punishment, *i.e.*, a reduction of one paygrade to E-4 and a forfeiture of half of his pay for two months, for various offenses. In a security clearance application (SCA) completed in late 2019, Applicant responded “No” to the question that asked whether he was “subject to court-martial or other disciplinary procedure under the Uniform Code of Military Justice (UCMJ) such as Article 15, Captain’s mast, Article 135 Court of Inquiry, etc.” Decision at 4. During a background interview in January 2020, Applicant also told an investigator he was not subject to any disciplinary action while on active duty. His failures to disclose the nonjudicial punishment in his SCA or to the investigator were not alleged in the SOR.

Under Guideline E, the SOR alleged that Applicant was terminated from a Federal agency for misusing a Government credit card and failing to pay the resulting debt and that he falsified his responses to three SCA questions. The falsification allegations pertain to (1) Applicant answering “No” to the question asking whether his employment at a Federal agency ended in 2016 due to him being fired, quitting after being told he would be fired, or leaving by mutual agreement following charges or allegations of misconduct; (2) him answering “No” to the question asking whether, in the last seven years, he had been counseled, warned, or disciplined for violating the terms of agreement for an employer’s travel or credit card; and (3) him answering “No” to various questions asking whether he had any financial delinquencies. In responding to the SOR, he admitted the three falsification allegations.

In a background interview, Applicant told the investigator that he did not believe he was fired from the Federal agency and he did not receive any written or oral reprimands and was not suspended for misuse of the Government credit card. In responding to the SOR, he stated he did not knowingly misuse the Government credit card.

At the hearing, [Applicant] testified that his personal credit card had been stolen, he did not have any cash, and he used the government credit card for food and materials that he needed for his work, such as foul weather gear, while he was on temporary duty away from his home and primary duty station. (Tr. 82-85.) He testified that he did not promptly pay off the charges on the credit-card account because he was sent on another temporary duty assignment. He made some payments on the account but never paid it in full. (Tr. 86.) [Decision at 5.]

While Applicant may not have understood all of the limitations on the use of the Government credit card, he knew that he had not paid charges incurred on that card. He also knew he had serious financial problems and “[h]is explanation that he did not know that the accounts had been referred for collection is implausible and unconvincing.” Decision at 11.

The allegation pertaining to the misuse of the Government credit card, noted above, was cross-alleged under Guideline F. The Judge found against Applicant on that Government credit card allegation and against him on 14 alleged delinquent debts. Most of these debts, including deficiencies from two vehicle repossessions totaling over \$25,000, remain unresolved. While he experienced conditions largely beyond his control, such as a divorce and car accident, he did not act responsibly. He disputed some debts but provided no documentation for the basis of those disputes. He testified that he hired a debt-resolution agency but he provided no documentation showing it has made any progress in resolving his debts. His financial situation is not under control.

Applicant failed to mitigate the alleged security concerns. “Applicant’s lack of candor in his SCA and his lack of financial responsibility raise serious doubts about his reliability, trustworthiness, and good judgment.” Decision at 14.

Discussion

In his appeal brief, Applicant does not challenge the Judge’s unfavorable Guideline F findings but does challenge his unfavorable Guideline E findings.

Alleged SCA Falsification for Failure to Disclose Financial Delinquencies

Regarding this alleged falsification, Applicant admits in his appeal brief that he knew that he owed debt but states he was going through a divorce and “had other numerous things . . . that made [him] forget about the debt[.]” Appeal Brief at 1. He also claimed he was making payments on a child support arrearage and, because he was making those payments on time, he was not delinquent on that debt. We do not find these arguments persuasive. In his SOR response, Applicant’s admission to this falsification allegation was unqualified. His SCA reflects that his

divorce occurred more than four years before he completed that document. He does not identify the “other numerous things” that purportedly caused him to forget the debts. Credit reports in the record confirm that Applicant had delinquent debts arising from vehicle repossessions, collection accounts, and charged-off debts. As provided in Directive ¶ E3.1.32.1, the Board gives deference to the Judge’s credibility determinations, including his conclusion that Applicant’s explanation that he did not know that the accounts had been referred for collection was implausible and unconvincing. From our review of the record, the Judge’s material findings and conclusions regarding Applicant’s alleged SCA falsification for failing to disclose his financial delinquencies 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).

Remaining Unfavorable Guideline E Findings

The issues that Applicant raises regarding the Judge’s unfavorable findings to the remaining three Guideline E allegations are more complicated. These three allegations are related to Applicant’s former probationary employment at a Federal agency. At this point, it merits noting that Applicant represented himself at the hearing below and his SOR responses contain inconsistencies that raise questions about whether he intended to admit the two falsification allegations related to that former employment.

In the decision, the Judge found, “[I]n his answer to the SOR, [Applicant] admitted that he was terminated for misuse of the government credit card and ‘failure to pay obligations.’” Decision at 4. This finding is inaccurate. Applicant denied that Guideline E allegation in his SOR response and also added the following annotation: “(Was never informed as to why I was terminated besides them telling me I was being laid off)[.]” SOR Response at 2.

Apart from Applicant’s questionable admissions to the related falsification allegations (discussed below), there is no other admissible record evidence that establishes he was terminated from the Federal agency for a misused Government credit card or that he was counseled, warned, or disciplined for misuse of that credit card. The summary of Applicant’s background interview does contain the following comments from the investigator: “Subject was advised the investigation revealed he was fired for . . . unfavorable conduct. . . . There was misuse of a government issued travel card and failure to pay obligations.” Government Exhibit 2 at 8. Applicant, however, disagreed with those comments during his background interview. The summary of Applicant’s background interview states in pertinent part:

Subject does not know why his behavior or conduct would be in question as he did not have any issues with anyone. His written evaluation was good and he had no disciplinary actions whatsoever. The reason he can’t remember what the issue was with the travel card is because it was too long ago. He did not list he was fired on the security questionnaire because he does not believe he was fired. He did not list any disciplinary actions because he did not receive any written/oral reprimand and wasn’t

suspended. . . . Subject does not admit to any wrong doing while using the travel credit card so he did not knowingly participate in any adverse behavior. He does not think that [the Federal agency] should have any reasons for adverse information regarding his trustworthiness, judgment, reliability, lack of candor or willingness to comply with rules and regulations. [Government Exhibit 2 at 8.]

Except for acknowledging at the hearing that he still owed a portion of the Government credit card debt, Applicant never admitted that the investigator's above-quoted comments were accurate or adopted those statements as his own. An investigator's allegation by itself is not sufficient to prove that the alleged event or conduct occurred. Based on our review, the record does not contain sufficient evidence to support the Judge's adverse finding that Applicant was terminated from the Federal agency for the alleged misconduct.

As a related matter, Applicant's denial of the above allegation—as well as his annotation in the SOR response that the Federal agency only informed him that he was being laid off—contradict his admission to the allegation that he falsified his SCA by failing to disclose that he was terminated from that agency due to misuse of the Government credit card. Additionally, Applicant's admission that he falsified his SCA by failing to disclose that he was counseled, warned, or disciplined for misuse of the Government credit card was qualified by his statement in the SOR response that “(I didn't knowingly misuse the Gov't credit card)” and contradicted by statements he made in his background interview and during his hearing testimony. Tr. at 82-95. Applicant essentially testified that he did not become aware of the alleged misuse of the Government credit card until after his security clearance adjudication began.

In short, Applicant's statements in his SOR response, background interview, and hearing testimony contradict his SOR admissions to the falsification allegations that pertain to his former Federal employment and are sufficient to raise significant questions about whether he understood what he was admitting. He was not specifically questioned at the hearing regarding these contradictions nor questioned about his understanding of the nature and scope of those admissions. In the decision, the Judge did not address these contradictions.

Despite the above issues, any errors the Judge may have made regarding these three related Guideline E allegations were harmless because they likely had no impact on the outcome of the case. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020). The Judge's adverse findings regarding the Guideline F allegations and the falsification pertaining to Applicant's failure to disclose his delinquent debts were sufficient to support the denial of his national security eligibility.

Weighing the Evidence

In his appeal brief, Applicant also contends that he is not a national security threat, that he is a “stand-up citizen,” and that he follows rules and regulations. He argues there is no reason why he should not be granted a security clearance. These arguments amount to a disagreement with the Judge's weighing of the evidence and are not 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 (App. Bd. Jan. 6, 2021).

Conclusion

Applicant has failed to establish that the Judge committed any harmful error. 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.”

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