



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203
 (703) 696-4759**

Date: May 11, 2022

In the matter of:)	
)	
)	
-----)	ISCR Case No. 19-01939
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 5, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline H (Drug Involvement and Substance Misuse) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 8, 2022, after the record closed, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged 13 concerns under Guideline E, including 12 falsifications during the security clearance adjudication process. Additionally, the SOR alleged 22 financial concerns under Guideline F and 1 drug use concern under Guideline H. The Judge found favorably for Applicant on the Guideline H concern and on one allegation under Guideline F. The Judge found adversely to Applicant on the remaining 21 Guideline F allegations and on all Guideline E allegations. The Judge’s favorable findings are not an issue on appeal. The Applicant raised the following issues on appeal: whether the Judge failed to properly consider all available evidence,

whether he erred in applying the mitigating conditions, and whether his adverse decision is consequently arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact: The Judge's findings are summarized in pertinent part.

Applicant is 34 years old and employed as a contract security officer. From 2007–2013, she was employed by her state's division of corrections as a corrections officer. She was unemployed from November 2013 to May 2014, worked for a non-DoD contractor from May 2014 to May 2017, and secured her current job in May 2017. She has never held a security clearance.

Drug Use and Termination

While working for the state's division of corrections, Applicant tested positive for marijuana in July 2013 in a random drug test. Applicant was interviewed, acknowledged her use of marijuana, received 15 days of disciplinary suspension, and was referred via her employer's assistance program to a drug counseling out-patient program. In October 2013, Applicant again tested positive for marijuana in a random drug test. In November 2013, she resigned from her position as a state correctional officer in lieu of termination. The record contains no evidence of any drug use since October 2013. At hearing, Applicant denied any illegal drug use in October 2013, denied receiving a notice of termination, and denied resigning in lieu of termination.

Finances

IRS records confirm that Applicant failed to file her federal and state income tax returns for tax years 2015–2018 until November 2019. For those tax years, Applicant owes delinquent federal taxes in excess of \$16,500 and delinquent state taxes in the approximate amount of \$2,300. To date, Applicant has made no material progress in addressing her delinquent federal and state taxes and has no documented plans in place with either tax authority.

In addition to her tax delinquencies, Applicant accrued 19 delinquent medical and consumer debts that total over \$32,000. Of these alleged debts, several were satisfied involuntarily and one was resolved voluntarily. Thirteen remain unresolved, with an aggregate balance of over \$23,000.

Omissions and Misstatements

In April 2018, Applicant completed her security clearance application (SCA) and failed to disclose the following: her use of marijuana in July 2013 and again in October 2013; her 15-day suspension in August 2013 for testing positive on a random drug test; her use of illegal drugs while employed as a corrections officer for her state corrections agency in 2013; her state employer's referral to counseling in August 2013 after the failed drug test; her resignation from her position as a corrections officer in November 2013 after testing positive for the second time; her failure to timely file her federal and state tax returns; her failure to timely pay her federal and state tax debts; and her accrual of delinquent medical and consumer debts. Applicant denied any intent to falsify her SCA, but her explanations were not persuasive.

In subsequent security clearance interviews with a government investigator in August 2018 and February 2019, Applicant denied that she was suspended from her employment, stated that she voluntarily left the division of corrections, and denied any failure to file or pay her federal and state income taxes.

In her response to DOHA interrogatories, submitted in September 2019, Applicant denied ever using marijuana and denied being placed on a 15-day suspension for drug use. She acknowledged that she did test positive for drugs in July and October 2013, but attributed those test results to prescription medicine that she was taking.

Based on a thorough review of the evidence, Applicant failed to provide honest and candid answers to the pertinent questions asked of her on her SCA, by the government investigator, and by the DOHA interrogations on the following topics: her past employment issues, her drug use and positive test results, and financial issues associated with her tax filing lapses and delinquent deb accumulations.

In an unrelated Guideline E matter, records document that Applicant was charged with discharging a firearm in January 2019. Applicant pleaded guilty to the charge in an April 2019 court hearing and was granted probation before judgment. Applicant has since disposed of the firearm.

The Judge's Analysis: The Judge's analysis is summarized and quoted in pertinent part.

Guideline F

While Applicant receives some extenuating benefit based on her reported medical issues and period of unemployment, her tax arrearages and delinquent medical and consumer debt remained unresolved following her return to full-time employment. Although some circumstances that caused her financial distress were beyond Applicant's control, she failed to act responsibly under the circumstances. Although Applicant disputes two debts, she does not submit adequate documentation to corroborate the bases of her disputes. On those debts she admits, she has failed to take documented voluntary steps to address the accumulated tax delinquencies and other debts.

Guideline E

Based on the evidence presented, none of the mitigating conditions apply to the facts of Applicant's case. Providing materially false information in her [SCA] and ensuing [clearance interviews] and DOHA-propounded interrogatories about her past marijuana usage, positive drug tests, disciplinary actions taken by state corrections, and financial issues associated with her untimely federal and state tax filing and accumulated delinquent tax and other debts not only impaired the DoD's ability to ascertain Applicant's past and current drug involvement and financial condition, but revealed serious lapses of candor and judgment by Applicant. [Decision at 15.]

Discussion

Applicant has not challenged any of the Judge's specific findings of fact. Rather, she contends that the Judge erred in two regards: first, he failed to consider all the mitigation evidence submitted; and, second, he failed to properly apply the mitigating conditions. Consequently, Applicant argues, the Judge rendered a decision that was arbitrary, capricious, and contrary to law. Of note, Applicant's appeal brief focuses almost exclusively on the Judge's findings under Guideline F. The brief does not address in any substantive fashion the Judge's 13 adverse conclusions under Guideline E, to include that the Applicant had deliberately falsified information on multiple occasions on her SCA, during her clearance interviews, and in response to DOHA interrogatories.

First, Applicant argues that the Judge "failed to adhere to the procedures required . . . when he failed to consider all relevant evidence submitted by Appellant" Appeal Brief at 4. However, counsel cites to no evidence of record that the Judge failed to consider. "The appeal brief must state the specific issue or issues being raised, and cite specific portions of the case record supporting any alleged error." Directive ¶ E3.1.30. Applicant's counsel failed to comply with this fundamental requirement and failed to carry his burden on this issue.

Second, Applicant argues that the Judge misapplied the mitigating conditions under Guideline F. For example, in arguing for application of Adjudicative Guideline (AG) ¶ 20(a)¹, Applicant notes that her financial issues arose seven years ago, under circumstances unlikely to recur, and asserts that these past financial issues should not cast doubt on her current reliability, trustworthiness, or good judgment. However, her debts remain delinquent. It is well-established that debts that became delinquent several years ago are still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

The remainder of Applicant's brief is fundamentally an argument that the Judge misweighed the evidence. None of Applicant's arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching his decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). Although we give due consideration to the Hearing Office cases that Applicant's counsel has cited, they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 17-02488 at 4 (App. Bd. Aug. 30, 2018).

Applicant has failed to establish that the Judge committed any harmful error or that she should be granted any relief on appeal. The Judge examined the relevant evidence and articulated

¹ AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Directive, Encl. 2., App. A.

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: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board