

Date: November 29, 2022

---

In the matter of: )  
 )  
 )  
 )  
 ----- )  
 )  
 )  
 Applicant for Security Clearance )  
 )  
 )

---

ISCR Case No. 20-02927

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Carl Anthony Marrone, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 28, 2021, 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 September 12, 2022, after close of the record, Administrative Judge Darlene D. Lokey Anderson denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged three delinquent debts and three foreclosures. The Judge found favorably for Applicant on the three delinquent debts and adversely to him on the three foreclosures. Under Guideline E, the SOR alleged that Applicant failed to disclose these same financial issues on his March 2018 security clearance application (SCA) and that he submitted false information on a mortgage modification application in about 2015. The Judge found adversely to Applicant on both Guideline E allegations.

On appeal, Applicant raised the following issues: that the Judge was biased, that she misapplied the Guideline F and E mitigating factors, that she permitted inquiry into matters not alleged on the SOR, and that she concluded that Applicant “was deliberately deceitful on his e-QIP and loan modification paperwork without any evidence to support this finding . . . .” Appeal Brief at 5. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant is in his late sixties, unmarried, with no children. He has a master’s degree and over 40 years of experience in the defense industry.

#### Guideline F – Financial Considerations

Applicant lives in a home that he purchased in 2000. During the real estate market downturn of 2008, Applicant learned of an opportunity to purchase inexpensive out-of-state rental properties as investments, with tenants and a property manager already in place. Applicant purchased three of these out-of-state rental properties and became a landlord.

Applicant never personally saw or inspected the properties he purchased; he never met the tenants or reviewed their credit history; and he never met the property manager. Naive, Applicant did not contemplate the risks involved in assuming the responsibility of being a landlord for out-of-state rental properties.

In 2008, the real estate market crashed, his tenants stopped paying the rent, and his property manager quit. Applicant attended a real estate seminar where he met two men who offered to help him with his out-of-state properties. Although the men were not licensed business advisors, Applicant trusted them, became friends, and accepted their help. One of the men (Friend) advised Applicant to default on his mortgages in order to force the note-holders to renegotiate more favorable terms. Applicant paid the men two or three thousand dollars for their advice and followed it.

In 2013, the mortgage holders foreclosed on all three properties, as alleged in the SOR. Post-sale, the final judgment amounts ranged from approximately \$55,000 to approximately \$69,000. There is no documentation to confirm that Applicant is fully released from any of the three foreclosure debts.

Applicant has never indicated that he did not have the funds to pay the mortgages. Asked why he did not simply pay off the debt on the rental properties, Applicant explained that—at the time of default—he owed more than the properties were worth.

Despite his issues with his initial three rental properties, Applicant continued to purchase additional investment properties—a fourth in 2008 and two more in 2012. He purchased the last two about the same time that he defaulted on the mortgages for his original three investments. Applicant continued to rely on Friend’s real estate advice. As part of Friend’s strategy to obtain loan modifications, Applicant filed a number of identity theft reports through the credit agencies, falsely claiming that some of the mortgage accounts recorded under his name were not his.

In 2019, Applicant purchased an additional property, which consists of two land parcels he plans to develop into a 13-unit subdivision with a partner. He obtained a loan at 13% interest to make the purchase, and he has a monthly payment of about \$3,700.

Applicant stated that he has stopped enlisting the help of Friend because he now has all of the loan modifications that he needs, to include one on his primary residence and one on a rental property. Applicant continues to associate with the acquaintances and friends whom he met through his real estate deals and who provided him with advice.

Applicant stated that he is current with all of his regular monthly expenses and has no other delinquent debt. He grosses about \$10,000 a month from his employer. He also has a company retirement plan and other savings. After paying his regular monthly expenses, Applicant states that he has money left over for discretionary expenses. He believes that his financial situation is under control.

#### Guideline E – Personal Conduct

In 2015, Applicant applied for a mortgage modification and falsely claimed that he lived—or had lived—in the property securing the mortgage. Applicant stated that he did not intend to defraud anyone, was relying on Friend’s advice, and was unaware of what he was signing.

Applicant’s explanation is not credible. Applicant knew exactly what he was doing when he signed the paperwork. His purpose was to obtain a loan modification and in order to obtain it, he needed to represent that he resided in the property, or the property would be considered an investment property, and the interest rate on the loan would automatically be higher. Applicant also admitted that he had filed a number of identity theft reports through the credit agencies saying that some of his mortgage accounts were not his, when in fact they were his mortgage accounts, in order to accomplish this loan modification. This is fraudulent. . . . To trust an unlicensed financial advisor’s methodology to help him obtain his loan modification shows poor judgment and unreliability. [Decision at 6–7.]

Applicant completed his SCA in March 2018. In response to the questions concerning judgments and foreclosures within the past seven years and civil court actions within the past ten, Applicant “deliberately failed to disclose” his delinquent debts and his three foreclosures. *Id.* at 7.

Applicant’s excuse for not being truthful was that he was not familiar with the terms of the questions that were being asked. . . . I do not find this explanation credible. Applicant is an intelligent, well-educated engineer, who has worked for defense contractors for over 40 years. He is expected to understand the questions on the application. . . . Applicant was consistent in answering each of the three questions in the negative. He knew or should have known how to read and understand the fairly simple questions on the application, and he should have been truthful in answering them.

Instead, Applicant deliberately lied in response to the questions . . . on his security clearance application. Within seven years of the application, he had allowed three of his out-of-state properties to go into foreclosure, he had strategically defaulted on his mortgage for his primary residence, strategically defaulted on a vacation home, and was delinquent on a line of credit owed to a bank. It is incomprehensible how his responses to the questions can be explained any other way. It is clear that he was deliberately not candid or truthful in his responses on the application. [ Decision at 7. ]

Applicant's performance evaluations for the period from 2009 through 2012 are highly favorable. Witnesses and letters of recommendation submitted on Applicant's behalf attest to his good character, diligence, and trustworthiness.

**The Judge's Analysis:** The Judge's analysis is quoted in pertinent part below.

#### Guideline F – Financial Considerations

[Applicant] purchased three properties intending to make money on his investment. When the housing market crashed, and his investment went “south,” he found a way to avoid the issue. He did not want to bear the burden of the decreased value of the properties, and so he defaulted on his contractual obligations and allowed the banks to assume the loss. He defaulted on three mortgage loans, and a line of credit. Instead of immediately getting out of the market, like a prudent person would do after such a devastating experience, he continued to invest and purchased more properties. He also continued to rely on the same people who advised him wrongly in the first place. By scrutinizing the timeline, Applicant was actually purchasing more properties while the out-of-state properties were going into foreclosure. His conduct was reckless, naïve, and dangerous. He was using scandalous tactics to obtain loan modifications to avoid conventional mortgage rates. Applicant has always had sufficient financial resources available to him to pay his mortgages, but chose to allow them to go into foreclosure. . . . He has shown poor judgment, unreliability, and untrustworthiness. None of the mitigating conditions apply. [Decision at 10–11.]

#### Guideline E – Personal Conduct

Applicant obtained a mortgage modification with an application that falsely stated that he lived in the property or had lived there prior to being displaced. This was not true. Applicant did not live in the property, and in fact obtained the modification for an investment property he owned. Applicant also deliberately concealed his derogatory financial history on his security clearance application. There is no excuse for this dishonesty. Deliberately concealing material information from the government on a security clearance application raises serious questions about one's credibility and trustworthiness. None of the mitigating conditions are applicable. [Decision at 12.]

## Discussion

### Bias

In his appeal brief, counsel for Applicant alleges that the Judge demonstrated hostility towards Applicant during the hearing, was not impartial, and was predisposed to find adversely. We do not find that argument convincing. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. The issue is not whether Applicant personally believes the Judge was biased or prejudiced against Applicant. Rather, the issue is whether the record contains any indication the Judge acted in a manner that would lead a reasonable person to question the fairness and impartiality of the Judge. *See, e.g.*, ISCR Case No. 20-02787 at 3–4 (App. Bd. Mar. 9, 2022).

Applicant’s counsel cites two examples of purported bias. In the first, the Judge interrupted cross-examination and admonished Applicant to be candid in his response. The transcript reveals that Department Counsel was asking Applicant whether he or Friend filled out his applications for loan modifications and that Applicant was vague and arguably evasive in his response. The Judge interjected at that point. She stated—at some length—that she was confident Applicant knew the answer and admonished him to “come clean and . . . answer [Department Counsel’s] question.” Tr. at 80. Applicant then admitted that he filled out the applications. *Id.* at 81. In the second example, Applicant testified that the three out-of-state rental properties went to foreclosure. The Judge interrupted cross-examination to clarify, as she recalled reviewing documents that stated otherwise—that Applicant had disposed of the properties via short sales or a deed in lieu. The Judge questioned Applicant’s counsel to determine who had provided the earlier contradictory information (*i.e.*, Applicant or his counsel) and to resolve whether the properties were in fact foreclosed upon. In the ensuing dialogue, Applicant and his attorney confirmed that Applicant had provided the erroneous information when responding to Government interrogatories. *Id.* at 98–99.

Counsel now argues that he and Applicant “should not have had to answer these accusatory questions” and that the “fact that these questions were asked, at all, demonstrates that [Applicant] did not receive a fair and impartial hearing.” Appeal Brief at 8. We are not persuaded. The Judge is the finder of fact. In both examples cited by Applicant’s counsel, the Judge was attempting to resolve factual issues central to the SOR allegations. In the first instance, Applicant was not responding to direct questions posed by Department Counsel. In the second instance, Applicant was providing testimony directly at odds with his own prior representations of record. The Judge’s efforts to resolve these factual issues were well within her authority. Although the Judge may have spoken sharply to Applicant and his counsel, we find nothing in her comments or in the Decision to suggest that she had an inflexible predisposition to render an adverse holding. To the contrary, the Judge found for Applicant on three allegations under Guideline F. The examples cited by Applicant do not rise to the level that might lead a reasonable person to question the Judge’s impartiality, nor do they rebut the presumption that the Judge ultimately decided the case on the record evidence. Applicant has not met his heavy burden of persuasion that the Judge was biased against him. *See, e.g.*, ISCR Case No. 20-02787 at 4.

### Due Process

Over objection by Applicant's counsel, the Judge permitted Department Counsel to inquire into Applicant's gambling habits, which were not alleged on the SOR. Applicant now argues that Department Counsel violated Applicant's due process rights and that the Judge "acquiesced" to this violation. Appeal Brief at 10. Without notice to Applicant, counsel argues, "it is impermissible to expect him to be prepared to address any additional Guideline F concerns . . . that were not included in his SOR." *Id.* at 9. First, we note that Department Counsel's questions arose from bank statements (Applicant Exhibit M) Applicant submitted that reflected payments to betting agencies. Second, we note that Department Counsel's questioning did not reveal gambling issues of security significance and that the Judge did not reference gambling issues in her decision. Finally, we note that a Judge is required "to examine the totality of an applicant's financial history and circumstances" when considering Guideline F security concerns. *See, e.g.*, ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). Applicant's gambling habits, as reflected on a document that he submitted, are part of his financial circumstances and subject to inquiry by Department Counsel to determine what role, if any, gambling played in Applicant's complicated financial history. We find no due process violation and determine this assignment of error to be without merit.

### Mens Rea

Applicant denies that he intentionally omitted the adverse financial information from his 2018 SCA and denies that he deliberately submitted false information on his 2015 loan application. Instead, Applicant says each was a "simple mistake." Appeal Brief at 11. Through counsel, Applicant contends that the Judge erred in determining that Applicant acted intentionally as "the record is completely devoid of evidence that he acted with deliberation." *Id.* at 9.

We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. A controverted falsification allegation requires a Judge to make a finding as to an applicant's intent or state of mind when the alleged falsification occurred, in light of the record as a whole. As a practical matter, such a finding may often rely on circumstantial evidence, rather than on an applicant's statements concerning his intent. *See, e.g.*, ISCR Case No. 12-05850 at 4 (App. Bd. Apr. 12, 2013).

Here, the Judge considered Applicant's intelligence, his advanced level of education, and his 40 years' of experience in the defense industry in concluding that Applicant understood the "fairly simple questions" on the SCA and that he "deliberately lied" in response to them. Decision at 7. She determined that any explanation other than deliberate deceit was "incomprehensible," in light of the fact that he had "strategically defaulted" on two mortgage loans and allowed three properties to go to foreclosure. *Id.* at 7.

We also note the Judge's adverse credibility determination and defer to it. Directive ¶ E3.1.32.1. In arriving at her adverse determination, the Judge considered that Applicant submitted "a number of fraudulent identity disputes . . . to contest mortgage accounts that he knew were his own." Decision at 13. Although not alleged in the SOR, she determined that this "evidence of

unscrupulous conduct” was “directly related to his credibility.” *Id.* We conclude that the challenged findings with regard to deliberate deception are supported by substantial evidence.

#### Misweighing the Evidence and Misapplying the Mitigating Conditions

Applicant contends the Judge improperly analyzed the evidence, under-emphasizing the favorable evidence and over-emphasizing the unfavorable evidence. In his arguments, Applicant highlights his long-term employment in the defense industry and the absence of any security violations. He attributes his financial problems to his naiveté and his reliance on advisors who proved to be “fraudsters.” Appeal Brief at 6 and 7. In a similar vein, Applicant argues that the Judge failed to apply the mitigating conditions properly. In essence, these portions of Applicant’s brief argue for an alternative interpretation of the record evidence, which is not sufficient to demonstrate the Judge’s findings and conclusions are erroneous. Applicant has not rebutted the presumption that the Judge considered all the evidence in the record, nor has he shown the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to the evidence. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant failed to establish the Judge committed any harmful errors. 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 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  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

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