



**DEPARTMENT OF DEFENSE**  
**DEFENSE LEGAL SERVICES AGENCY**  
**DEFENSE OFFICE OF HEARINGS AND APPEALS**  
**APPEAL BOARD**  
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Date: June 25, 2024

In the matter of:	)	
	)	
	)	
----	)	ISCR Case No. 22-02382
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Chief Department Counsel

**FOR APPLICANT**

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 29, 2023, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing which was held on March 6, 2024. On April 8, 2024, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the Judge’s decision.

Under Guideline F, the SOR alleged that Applicant filed bankruptcy in 2018 and that he allowed acquaintances to use his PayPal account to fraudulently steal money from other people. Applicant admitted to both allegations but denied complicity in the fraud. Under Guideline E, the SOR cross-alleged the fraud allegation and also alleged that applicant had been terminated from three jobs. Applicant admitted the fraud allegation but denied complicity and admitted the

employment terminations with explanations. The Judge found in Applicant's favor as to both Guideline F allegations and against him as to all Guideline E allegations.

On appeal, Applicant alleges: 1) that the Administrative Judge improperly applied factual findings that were unsupported in the record; 2) that the analysis of mitigating factors was piecemeal and fragmented by only considering unfavorable evidence; 3) that the Judge fails to provide an analysis of a disqualifying condition for Guideline E; 4) that the analysis of Guideline E is contradictory to the findings under Guideline F; 5) that the Guideline E analysis wholly ignores relevant information related to the Appellant's employment; and 6) that "the Guideline E analysis supplants the employer's favorable opinion for the Judge's unfavorable opinion." Appeal Brief (AB) at 6. Our review of the Judge's decision confirms that he considered all relevant issues and properly applied the mitigating conditions. Consistent with the following, we affirm.

### **Judge's Findings of Fact and Analysis**

The Judge made the following findings of fact relevant to allegations found against Applicant: Applicant is a 33-year-old network systems administrator employed by a federal contractor since May 2022. When previously employed by a commercial bank, he was terminated for repeated tardiness. His employment with an apartment rental agency was terminated for not following the procedures for completing resident surveys, and he also was terminated from employment at a call center for not meeting company goals and objectives. His current employer rated him as a "solid contributor" although he needed improvement in following directions and arriving on time to work and meetings. Two coworkers attested to Applicant's proficiency, problem-solving skills, honesty, and sincerity.

Applicant gave "a good friend" access to his PayPal account so that he could purportedly transfer funds to his girlfriend, although Applicant admitted that he did not know his friend's last name and did not know where he lived. His friend paid Applicant about \$150 - \$200 in exchange for access to his account information and then used the account to steal between \$4,000 and \$5,000 from credit-card and debit-card accounts of other PayPal users. Applicant learned of the thefts when PayPal notified him of what appeared to be unauthorized use. Applicant did not notify law enforcement authorities about the compromise of his PayPal account or tell PayPal that he had given his friend access to the account. Applicant was not charged with any criminal conduct, and he listed the PayPal fraud in his Security Clearance Application. There is no evidence that Applicant was directly involved in the thefts and there is no evidence showing that he was an accomplice in the PayPal fraud. Subsequently, Applicant was the victim of a separate scheme in which he agreed to cash a check for a stranger in return for compensation, only to discover that the check was fraudulent.

The Judge concluded that because Applicant was not directly involved in the PayPal fraud, Guideline F Disqualifying Condition ¶ 19(d) was not established. However, under Guideline E, the Judge found that Applicant's naïve facilitation of the PayPal fraud demonstrated a serious lack of good judgment that was unmitigated. He also concluded that Applicant's employment terminations were due to his unwillingness to follow rules.

## Discussion

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. ISCR Case No. 97-0435 at 3 (App. Bd. Jul. 14, 1998).

Applicant alleges the following specific factual errors in the decision: that the Judge erroneously concluded that Applicant demonstrated a second instance of poor judgment because, after the PayPal incident, he fell for a check-cashing scam; that the Judge's opinion usurps his employer's favorable opinion of Applicant; and that the Judge made contradictory findings when he concluded under Guideline F that Applicant did not directly engage in fraud but that Applicant's involvement demonstrated poor judgment under Guideline E. AB at 7. Although Applicant frames his arguments as factual errors, the challenges conflate "facts" with "conclusions."

Applicant's focus on the Judge's comment that Applicant did not learn from the PayPal event because he subsequently engaged in a questionable check cashing scam is misplaced. AB at 7-8. We do not evaluate a Judge's decision based on isolated words or sentences but, rather, on the decision viewed as a whole. ISCR Case No. 20-00204 at 4 (App. Bd. Feb. 2, 2022). Applicant's acknowledgement that the chronology of events is unclear favors deference to the Judge's conclusion. But regardless of whether Applicant's involvement took place shortly before or after the PayPal incident, the significance of that event is that it reflects another instance of Applicant's exercise of poor judgment by unquestioningly engaging in a financial transaction that, at the very least, required due diligence in investigating its legitimacy and legality. A Judge may consider non-alleged conduct (a) in assessing an applicant's credibility; (b) in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether the applicant has demonstrated successful rehabilitation; and (d) in applying the whole-person concept. *E.g.*, ISCR Case No. 12-01038 at 3 (App. Bd. Jun. 26, 2013). Nothing in the record or the Judge's decision indicates that he considered Applicant's role in the second scam in a manner that is inconsistent with this analytical approach.

In reaching his conclusion that Applicant's employment terminations reflect an unwillingness to follow rules, the Judge's factual findings acknowledged the favorable comments by his current employer. However, Applicant's workplace conduct is more relevant to the adjudication of his suitability for access to classified information than are his professional skills or his value to his employer. The purpose of a clearance adjudication is to assess judgment and reliability, not workplace competency. ISCR Case No. 04-11893 at 7 (App. Bd. Apr. 25, 2006). It was not unreasonable for the Judge to focus on the fact that Applicant's most recent performance appraisal reflects that he demonstrates a pattern of tardiness and failure to follow procedures, which is consistent with the reasons he was terminated by other employers. *See* ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012) (Guideline E analysis properly focused on Applicant's disdain for complex paperwork, which evidenced a knowing and willful failure to comply with

rules or regulations). This reflects ongoing conduct that is particularly relevant inasmuch as Applicant points out it has been seven years since the last adverse disciplinary action. The Judge's findings are substantially supported by the evidence.

Applicant's assertion that, because the Judge found favorably under Guideline F, he must find in Applicant's favor under Guideline E is a *non-sequitur* and fails to recognize the alleged conduct raises different concerns under the two Guidelines. An SOR allegation may be included under more than one Guideline and may be given independent weight under each. Furthermore, a finding of mitigation under one Guideline does not compel a similar finding under another. *E.g.*, ISCR Case No. 08-07575 at 2 (App. Bd. Oct. 8, 2010). By focusing on the concepts of questionable judgment and irresponsibility, the Guidelines contemplate that behavior will have independent security significance under Guideline E. ISCR Case No. 06-20964 at 6 (App. Bd. Apr. 10, 2008); ISCR Case No. 04-09251 (App. Bd. Mar. 27, 2007) (holding that a favorable finding under Guideline M did not preclude an adverse finding under Guideline E regarding the same underlying conduct).

The Judge's analysis and conclusions under Guideline F have no bearing or relationship to his Guideline E analysis because each Guideline addresses a different concern. The crux of the allegation under Guideline F is whether Applicant was a party to the financial fraud. Under Guideline E, the crux of the allegation addressed Applicant's "poor choices [that] gave another person the ability to commit fraud" by allowing that individual access to his PayPal account. Decision at 6. The Judge's conclusion that Applicant was not involved in the actual commission of the fraud is not inconsistent with his conclusion that Applicant's involvement in the chain of events nevertheless reflected poor judgment. An applicant who does not behave prudently when faced with certain facts prior to participating in a facially preposterous venture cannot be said to have exercised sound judgment. *See* ISCR Case No. 14-05803 at 4 (App. Bd. July 7, 2016); ISCR Case No. 10-02803 at 6, Fn. 9 (App. Bd. Mar. 19, 2012).

The remainder of Applicant's brief advocates for an alternative weighing of the evidence. An applicant's "disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law." ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, there is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise, and a bare assertion that the Judge did not consider evidence is not sufficient to rebut that presumption. *E.g.*, ISCR Case No. 19-03344 at 3 (App. Bd. Dec. 21, 2020). The Judge is not required to discuss every aspect of the evidence in his decision. *E.g.* ISCR Case No. 03-07874 at 4 (App. Bd. Jul. 7, 2005).

We have considered the entirety of Applicant's arguments. The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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). “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security. AG ¶ 2(b).

**ORDER**

The decision in ISCR Case No. 22-02382 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board

Signed: James B. Norman

James B. Norman  
Administrative Judge  
Member, Appeal Board