

Background

Applicant is in her late fifties. She earned a bachelor's degree in the mid-1980s, was granted her first security clearance shortly thereafter, and has been with her current employer since 2014. The SOR alleged that Applicant failed to timely file her federal income tax returns for tax years (TYs) 2018 through 2021 (SOR ¶ 1.a) and that she carried delinquent debt totaling approximately \$117,000 across 10 credit card accounts (SOR ¶¶ 1.b-1.k). In her answer to the SOR (Answer), Applicant admitted all allegations, with explanations.

Delinquent Credit Card Debt

Between 2014 and 2019, Applicant amassed over \$117,000 in delinquent credit card debt. Throughout the clearance adjudication process, Applicant attributed this delinquent debt to a failed 2014 business venture—specifically, a contract that was purportedly awarded to her consulting business but then rescinded. Applicant first proffered this explanation in two separate security clearance applications and then reiterated the same basic story in her background interview, her response to Government interrogatories, her Answer, and her initial testimony at hearing. At each of those junctures, Applicant asserted or implied that the significant credit card debt resulted directly from spending money in anticipation of beginning work on the contract (*e.g.*, renting office space and hiring employees).

Under examination at hearing, however, Applicant equivocated and wavered. She could not identify what business expenses—if any—she incurred in her failed 2014 venture, and the Judge ultimately concluded that “Applicant did not actually incur any additional expenses as a direct result of preparing for an anticipated contract or due to the failure to gain the contract.” Decision at 18. After that explanation for her credit card debts failed at hearing, Applicant was “unable or unwilling to provide a plausible explanation for how she incurred the debts.” *Id.* Post-hearing, Applicant submitted a statement to account for some of the funds, but the Judge concluded that “[e]ven if these previously unmentioned expenses are accurate,” they only accounted for approximately \$39,000 of the total \$117,000 debt, leaving unexplained how she spent the remaining \$78,000. *Id.*

In reviewing the current status of the ten delinquent accounts, the Judge acknowledged that Applicant had resolved three accounts and had established payment plans for six others. With the exception of an unresolved lien that resulted from the remaining alleged debt, the Judge found that Applicant was current on all her ongoing financial obligations. *Id.* Nevertheless, the Judge concluded that none of the mitigating conditions applied:

Applicant's financial issues are recent and ongoing. She still owes \$64,897 on the SOR debts. She shifted from making false assertions about how she incurred such significant credit-card [] debt [to] being evasive in her responses regarding the debt. She only addressed two debts before receiving the SOR and in both cases her actions were in response to the creditors' initiatives. Although she has not incurred any delinquent debt since [] 2019, the large balance of her outstanding debt, the unresolved \$27,027 lien, and her

inability to explain how she amassed the debts raise concerns about financial responsibility and ability to protect classified information. Her failure to act responsibly in an effort to resolve the debts and her false and misleading statements cast doubt on her current reliability, trustworthiness, or good judgment. [*Id.* at 19.]

Unalleged Conduct

Although the SOR did not explicitly allege gambling as a financial security concern, the record reveals that Applicant's gambling habits were in issue throughout the adjudication of her security clearance. During Applicant's December 2021 background interview, the investigator questioned Applicant about "large financial transactions" at a local casino. Applicant acknowledged that she occasionally went to the casino and stated that her wins and losses did not affect her finances or place her under any financial strain. Government Exhibit (GE) 2 at 14-15. In November 2022, the Government pursued the issue with interrogatories, asking Applicant to verify whether on four specific dates in August 2020 she spent \$10,955, \$14,965, \$12,390, and \$22,220 respectively and whether on one of those same dates she redeemed \$20,525, all at a named local casino. To each of those five questions, Applicant responded: "Per extensive research, these numbers are calculated 'estimates' and not actual amounts." *Id.* at 19-20. The interrogatories also asked Applicant to estimate both the number of times she had frequented a casino in the preceding five years and her winnings and losses during that time frame. Applicant responded, "40-50 times. Estimated Win/Loss +\$31,000." *Id.* at 20.

At hearing, Applicant provided narrative testimony to the Judge after submission of her documents. Transcript (Tr.) at 17-28. Regarding the four dates in August 2020 detailed in the interrogatories, Applicant disputed that she spent the amounts referenced, which totaled about \$60,500, and testified that her own records reflected that she spent \$800. *Id.* at 19-21. In support of this assertion, Applicant submitted a heavily-redacted August 2020 bank statement showing ATM withdrawals at the local casino totaling about \$800 on the dates in issue. Applicant Exhibit (AE) L. Under cross-examination, Applicant reiterated her interrogatory response that she visited casinos approximately 40 to 50 times during the 2015 to 2019 timeframe and that her winning and losses were "plus \$31,000." Tr. at 99.

In a statement submitted after the hearing, Applicant asserted that she has "no gambling debts, loans or problem" and again challenged the Government's questions regarding her gambling in August 2020, stating that the amounts referenced were inaccurate because "a person's invested amount cannot be determined and there is no assurance/proof this activity was accumulated by the actual person reported." AE W.

Post-hearing, the Government submitted records from the local casino's parent company. The detailed records covered the period from 2015 to 2022 and reflected Applicant's gambling activity both at the local casino and at two out-of-state casinos owned by the same company. A summary of the most pertinent data includes:

- Between August 2015 and August 2022, Applicant inserted \$244,416 into gaming devices at three separate casinos owned by the same parent company

and cashed out \$28,225, for apparent losses of \$216,161. GE 10-13.

- Looking specifically at the five-year period queried in the Government’s interrogatories, Applicant gambled at the casinos on 154 occasions, during which she inserted \$196,561 into gaming devices and cashed out \$26,925, for apparent losses of \$169,636. *Id.*
- Looking specifically at the days in August 2020 that were at issue in her interview, the interrogatories, and at hearing, Applicant gambled daily from August 19 through August 25, 2020, with the exception of August 22, 2020. Contrary to her testimony that she played a total of \$800 during those dates, Applicant inserted a total of \$76,775 into gaming devices and cashed out \$20,525. GE 10.

The Judge noted that the gambling conduct was not alleged and that she would consider this non-alleged conduct only for the limited purposes permitted under Appeal Board precedent. Decision at 19 (citing ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)).

Discussion

Errors in Findings of Fact and Conclusions of Law

On appeal, Applicant’s counsel asserts that the Judge erred both in her findings of fact, making “factual determinations which were wholly inaccurate and are not supported by the record,” and in her conclusions of law. Appeal Brief at 9. For both assertions, Counsel states that “[t]hese errors are delineated at [D], *infra.*” *Id.* They are not. Paragraph [D] concerns a different topic altogether and contains no arguments about either findings of fact or conclusions of law. Our review of the 56-page brief reveals no discussion elsewhere of erroneous findings or conclusions. A fundamental requirement of the Directive is that 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. These first two assignments of error fail to meet the minimum requirement for our review, and we decline to consider them further.

Government’s Failure to Meet Burden of Proof

Next, Applicant’s counsel challenges whether the Government met its burden of proof. In making this argument, counsel focuses on the fact that Applicant was asked questions in Government interrogatories and at hearing regarding her gambling activities of August 2020 without being provided any records detailing those transactions. Counsel characterizes these records as “the evidence constituting the Government case.” Appeal Brief at 10. This argument is fallacious in at least three regards. First, gambling was not alleged, and the Government met its burden of proof on the ten alleged delinquent debts and the alleged failure to file income tax returns when Applicant admitted to all allegations in her Answer. Those admissions are buttressed, as the Judge noted, by the five credit reports submitted by the Government. Decision at 2; GE 3-6, 8. Second, and as the Judge explained at hearing, the Government was required only to have a good-faith basis for its questions about Applicant’s gambling activities and was not required to produce

the underlying documents. Tr. at 78-79. Third, the Government obtained casino records post-hearing that detailed Applicant's gambling history, and those documents were admitted without objection from Applicant. GE 10-13; Decision at 2. To the extent that counsel is complaining that proof of the gambling activity was not introduced into evidence, that complaint was certainly addressed by the Government's post-hearing submission. Contrary to Applicant's argument, the Judge's conclusion that the Government carried its burden of proof is well-supported by the record.

Due Process and Credibility Assessment

Finally, counsel argues that the Judge failed to advise Applicant properly on her "role" as a *pro se* applicant and that the Judge's credibility determination was flawed as a consequence because "the necessary questions were not asked." Appeal Brief at 10. We turn first to counsel's argument that the Judge failed to properly advise Applicant on the hearing process, which is fundamentally a due process claim. Counsel argues repeatedly that the Judge's "read-in" was inadequate and that Applicant did not understand that "she had to present questions on her own behalf, rather than rely simply on what Department Counsel or the Judge asked." *Id.* The record, however, confirms that Applicant received repeated notice of her rights and responsibilities at the hearing, that she had ample opportunity to seek clarification of any concerns she might have had, and that she availed herself of her rights at the hearing.

First, Applicant received a copy of the Directive along with the SOR and was therein informed of the "opportunity to present evidence on his or her own behalf, or to be represented by counsel or personal representative." Directive ¶ 4.3.4. Second, when the Government provided Applicant with copies of its proposed hearing exhibits, Applicant was also provided with considerable information about the hearing, directed to the Additional Procedural Guidance for further information, and specifically informed, *inter alia*, of her opportunity to make opening and closing statements and to present documentary evidence or witness testimony. Finally, at the beginning of the hearing, the Judge addressed many of the hearing's procedural aspects. Tr. at 7-11.

Counsel's brief ignores these multiple instances of notice, as well as the continuing dialogue throughout the hearing in which the Judge explained various aspects of the process. *Id.* at 15-16 (confirming Applicant's receipt of Government Exhibits and inquiring into any objections); *id.* at 16-17 (explaining options regarding presenting testimony and documentary evidence); *id.* at 23 (explaining that she will keep the record open for submission of additional documents and offering opportunity to continue narrative testimony); *id.* at 77-79 (answering Applicant's question about gambling records that had not been introduced into evidence); *id.* at 120-121 (explaining closing statement); *id.* at 131-132 (explaining final opportunity to augment her case and leaving record open for a month).

Although applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights and interests under the Directive. *E.g.*, ISCR Case No. 00-0593 at 3 (App. Bd. May 14, 2001). There is a rebuttable presumption that applicants, as adults, are legally competent and capable of making rational decisions concerning their hearings. ISCR Case No. 01-20579 at 2 (App. Bd. Apr. 14, 2004). This would include, at a minimum, the capacity to inform the Judge of any concerns or confusion. Nothing in the record or counsel's

appeal brief indicates that Applicant lacked the competence to represent herself or make independent choices during the hearing. Nor was there anything in Applicant's conduct during the hearing that would give rise to an inference that she was confused about her "role." Rather, she actively participated in the hearing, submitting 16 exhibits (AEs A-P), testifying on her own behalf, making an opening statement and a closing argument, and presenting substantial post-hearing documentary evidence (AEs Q-DD). In summary, the record confirms that Applicant received all process due under the Directive and that counsel's argument to the contrary is baseless.

In a related argument, counsel avers that the Judge could not properly assess Applicant's credibility because Applicant was not adequately on notice that she needed to present her own case rather than simply respond to questions by the Judge and the Government and therefore did not present all necessary testimony. As detailed above, we conclude that Applicant was properly advised of her rights and responsibilities at the hearing. Moreover, based on our review of the record and decision, we find no reason to disturb the Judge's adverse credibility assessment.

The Directive requires the Appeal Board to give deference to a judge's credibility determinations. Directive ¶ E3.1.32.1. Upon her review of the evidence in this case—to include Applicant's testimony at the hearing—the Judge made several conclusions that reflected adversely on Applicant's credibility. Regarding the delinquent credit card debt, the Judge concluded that Applicant "has lied, misled, and equivocated about how she incurred the SOR debts from her 2020 [SCA] through her post-hearing submissions." Decision at 20. Additionally, the Judge noted that she was considering Applicant's lack of candor on her gambling habits in assessing her credibility, which is a permissible use of non-alleged conduct. The Judge highlighted that Applicant was put on notice of security concerns raised by her gambling in the December 2021 background interview and again in the November 2022 interrogatories, that "[h]er position in her responses to the interrogatories, her testimony, and her post-hearing statement was to deny conduct that the Government had not proved," and that the Government's post-hearing submission made clear that Applicant "was not being candid and forthcoming about her gambling practices." *Id.* at 19-20. Those credibility determinations are well within the Judge's authority and well supported by the evidence of record.¹ On appeal, a party challenging the resulting credibility determination has a heavy burden of persuasion, and Applicant's challenge to the Judge's negative assessment of her credibility is not sufficient to meet her heavy burden. *E.g.*, ISCR Case No. 03-05072 at 5 (App. Bd. Jul. 14, 2005).

¹ The Judge erred, however, in concluding that Applicant lied in her response to interrogatories and her Answer regarding the filing dates for the delinquent federal income tax returns alleged at SOR ¶ 1.a. Contrary to the Judge's finding, the tax account transcripts confirm that Applicant responded truthfully in both documents in stating that her delinquent tax returns had been filed. We conclude, however, that the error is harmless, in that it did not likely affect the outcome of the case. *E.g.*, ISCR Case No. 03-23829 at 3 (App. Bd. Apr. 27, 2007). In arriving at her adverse assessment of Applicant's credibility, the Judge relied primarily on Applicant's lack of candor throughout the security clearance process about both her debts—the gravamen of the case—and her gambling. We conclude, therefore, that the Judge's error about the filing date of delinquent tax returns did not likely affect her ultimate adverse determination.

Hearing Office Cases

In his brief, Applicant's counsel cites to and summarizes 62 hearing-level decisions in prior Guideline F cases. Appeal Brief at 18-51. Counsel's reliance on hearing-level decisions is misplaced because each case must be judged on its own merits. AG ¶ 2(b). As the Board has frequently stated, how particular facts scenarios were decided at the hearing level in other cases is generally not a relevant consideration in our review of a case. Only in rare situations - such as separate cases involving spouses, cohabitants, or partners in which the debts and the financial circumstances surrounding them are the same - would the adjudication outcome in another case have any meaningful relevance in our review of a case. The 62 Hearing Office decisions that Applicant's counsel recites have no direct relationship or unique link to Applicant's case that would make them relevant here.

In conclusion, Applicant has failed to identify any harmful error in the Judge's handling of this case or in her decision. 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 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). The Judge's adverse decision is sustainable on this record.

Order

The decision in ISCR Case No. 22-01977 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board