

KEYWORD: Guideline F; Guideline E

DIGEST: The cited portion of the interview summary from Applicant investigation merely represents a recitation of Applicant's responses during the interview, not the interviewers opinions. Adverse decision affirmed.

CASENO: 14-06406.a1

DATE: 12/04/2015

DATE: December 4, 2015

In Re:)
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 -----) ISCR Case No. 14-06406
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

(Deleted), Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 3, 2015, 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 15, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge made the following findings of fact: Applicant served in the U.S. military from the 1980s to the early 1990s. He was charged by the military in 1992 with committing fraud because he applied for and was receiving housing and other allowances that he was not entitled to receive. Specifically, Applicant applied for and received allowances for military members with a dependant(s). Although he was married to his first wife, they had been separated for years and he was not providing her financial support. Long after Applicant and his first wife permanently separated, he submitted at least two forms to the military claiming that he and his former wife were living together in order to receive the higher-rate allowances. When interviewed by military investigators, Applicant was specifically advised that he was suspected of committing fraud against the U.S. Government, in violation of Article 132, Uniform Code of Military Justice (UCMJ). After waiving his right to counsel and to remain silent, Applicant told the investigators that he was unable to afford to get a divorce from his former wife because of financial problems. He went on to state, “Unfortunately, I did not realize until now the seriousness of my actions, therefore I am willing to take full responsibility for my actions.”

Applicant went to a preliminary hearing on the UCMJ charges, where he was represented by a military defense counsel. Subsequently, he submitted a request for discharge in lieu of trial by court-martial. His request was granted and he received an under other than honorable conditions discharge (UOTHC). His federal income tax returns were intercepted to recoup the \$8,500 in allowances he illegally received.

Applicant submitted a security clearance application (SCA) in 2014. He stated therein that he has received a UOTHC discharge for dating his current wife while she was still married to her first husband and charges were brought against him by that former husband. Applicant was subsequently interviewed by a security clearance background investigator. Applicant told the investigator that he was investigated and discharged from the military for adultery. At his hearing, he admitted that he was investigated and discharged from the military for committing fraud, not for adultery. He also testified that the reason he listed adultery as the reason for his discharge on his SCA was because he did not remember the correct information.

Applicant purchased furniture on credit and was not required to pay for it for the initial 18 months. After the 18-month grace period ended, he did not make any of the required payments. In 2008 the creditor secured a judgment against him in the amount of \$7,500. He purportedly entered

into a repayment plan with the creditor, but stopped paying after about six months. He did not submit evidence of the plan or the payments. Applicant has not contacted the creditor to resolve the debt. He stated that his financial problems were due to layoffs, unsteady employment and underemployment. He submitted no evidence of financial or debt counseling, or a written budget.

The Judge reached the following conclusions: Regarding Guideline F, the outstanding debt is not an isolated incident. Instead, it is symptomatic of a longstanding history of financial problems dating back to the mid-1980s. Applicant has yet to take any discernible action, to include financial counseling, to change the trajectory of his financial situation. It appears likely that his poor financial situation, as well as the attendant security concerns, will continue into the foreseeable future.

Regarding Guideline E, Applicant intentionally falsified his SCA when he failed to disclose the true reason for his UOTHC discharge. Applicant's explanation for not listing fraud on his SCA as the reason for his UOTHC is implausible and not credible. Moreover, Applicant's attempt to mislead the Government regarding the basis for this UOTHC discharge did not end with the submission of his SCA. Instead, he repeated the lie that he was discharged for adultery to the background investigator. None of the mitigating conditions apply. Applicant's falsification of his SCA is recent and was part of an ever escalating plan to mislead the Government regarding his past. It is not clearly consistent with the national interest to grant Applicant access to classified information.

Applicant argues that the Judge did not take all provided information into account when he made his final decision. In a fashion similar to his assertion at the hearing, he argues evidence and facts that he believes establish that he did not defraud the Government while in the Air Force and he did not subsequently attempt to deceive the Government about his past during his security clearance application process. Lastly, Applicant stresses, by way of mitigation, that his actions while in the Air Force occurred over twenty-four years ago. Applicant has not established error on the part of the Judge.

Applicant's brief includes matters not contained in the record, which we cannot consider. Directive ¶ E3.1.29. Applicant's citation to several items of evidence that he argues support his position is not sufficient to rebut the presumption that the Judge considered all the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). To the extent that he is challenging the Judge's findings of fact, we conclude that the findings are based on substantial evidence or constitute reasonable inferences from the evidence. Neither do his arguments demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 08-06438 at 2 (App. Bd. Aug. 4, 2009). Moreover, Applicant has cited to no error likely to change the outcome of the case. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant cites to a portion of the interview summary for the proposition that he is financially stable and not subject to blackmail. These comments represent Applicant's responses to questions asked of him during the interview. They are not the interviewer's opinion of the state

of Applicant's finances or Applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015).

The Judge's resolution of conflicting evidence relating to the Guideline E falsification allegation rests, in substantial part, on his negative assessment of Applicant's credibility. After a review of the entire record, the Board concludes that the Judge's credibility assessment is reasonably supported by the evidence.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The Judge's decision is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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