

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s finding that Applicant deliberately omitted information from his application was supported by substantial record evidence. Adverse decision affirmed.

CASENO: 08-11152.a1

DATE: 01/07/2010

DATE: January 7, 2010

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In Re:	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 10, 2009, DOHA 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 22, 2009, after the hearing, Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s factual findings are based on substantial record evidence and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant retired from the U.S. military as an O-6 following a 30 year career. He is a naval architect for a government contractor and is also president of a consulting firm. He held a Top Secret clearance while in the military.

In 2005 Applicant refinanced the mortgage on his primary residence. He also mortgaged an abutting parcel of land upon which he intended to build a house. He intended to sell that house for a profit. In the latter half of 2006, Applicant failed to make payments on the mortgage for his primary residence. The bank filed a complaint against Applicant, seeking foreclosure of the property. Applicant and the bank litigated various issues related to the foreclosure, an appeal of a summary judgement motion eventually making its way to the state supreme court. However, ultimately a trial court ordered foreclosure, although Applicant was able to redeem the property by obtaining another mortgage. In 2007, the bank sought foreclosure of the mortgage on the second property. Issues relating to this matter were litigated in court.

When completing his security clearance application (SCA) Applicant answered “no” to three questions. One inquired as to whether, in the previous seven years, he had ever been over 180 days delinquent on any debts. Another asked whether he was currently over 90 days delinquent on any debt. A third asked if, in the previous seven years, he had been a party to a civil court action. At the hearing, Applicant advised the Judge that he had answered “no” to the first two questions because he believed he would be successful in contesting the foreclosure actions. Regarding the third question, Applicant stated that he did not realize at the time he completed the SCA that the foreclosures were civil court actions.

In concluding that Applicant had deliberately omitted the information about his debts and the lawsuits, the Judge considered Applicant’s status as a retired officer with prior experience in applying for security clearances. She also considered the extent to which Applicant’s claims not to know that the foreclosures were civil court actions lacked credibility. “Although Applicant is not a lawyer, it is simply not credible for him to claim that the results of the lawsuit would determine whether it was a civil action or a foreclosure for purposes of whether he was required to disclose the ongoing legal proceedings[.]”<sup>1</sup> Decision at 11.

In his appeal brief Applicant challenges the Judge’s findings of fact. He provides detailed information concerning his reasons for obtaining the mortgages in question and concerning the circumstances of the litigation which ensued. Additionally, Applicant challenges the Judge’s finding that his omissions on the SCA were deliberate. The Board has considered the Judge’s discussion of Applicant’s intent and concludes that it is sustainable. In addition to the factors referenced in the previous paragraph, the Board also notes record evidence that Applicant, a graduate of a U.S. military academy, of a distinguished civilian university, and of his service’s War College, possessed a level of education more than sufficient to enable him to understand the questions at issue. In

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<sup>1</sup>“Q: [At the time you completed the SCA] you were a party to a civil action, is that right? A: I didn’t understand that answer or that question that way. Q: How did you understand it? A: I did not understand that what . . . the bank had brought was a civil action against me. I understood that what the bank was attempting to do was recover their loan. I thought that I had the opportunity to prove my innocence and the results of that would determine whether it was a civil action or a foreclosure.” Tr. at 53.

addition, the record includes three exhibits, two being decisions by the state supreme court and another an order of foreclosure by a trial court. These documents contain findings of fact, conclusions of law, and appropriate orders from the courts. They identify the bank as plaintiff and Applicant as defendant. Anyone a party to proceedings such as those described in the aforesaid documents would reasonably have understood himself to have been involved in a civil court action. Even if the Judge's extensive findings contain errors or omissions, they are not likely to have affected the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 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 Judge's decision that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 13. "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).

### **Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board