

KEYWORD: Guideline E; Guideline F

DIGEST: The number of false answers contained in two different SCAs, Applicant's experience with the security clearance process, his admission that he answered as he did in order to complete his SCAs quickly, and the Judge's evaluation of Applicant's credibility support the Judge's findings that Applicant's omissions were deliberate. Adverse decision affirmed.

CASENO: 10-03898.a1

DATE: 07/03/2014

DATE: July 3, 2014

In Re:)	
)	
-----)	ISCR Case No. 10-03898
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 8, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial

Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 14, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 findings of fact contained errors and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is an employee of a Defense contractor. He attended college for one year and did not receive a degree. He served in the U.S. military from 1999 until 2002. He submitted his first security clearance application (SCA) while in basic training, receiving his clearance soon thereafter. He has held a clearance since then.

While in the military, Applicant received discipline under Article 15, UCMJ, three times.¹ The offenses were one instance of sleeping on duty and two of failure to obey orders. After this, Applicant's command discharged him for misconduct, his service characterized as General Under Honorable Conditions. He was required to pay back a \$6,000 enlistment bonus.

After leaving the military, Applicant worked for a Government contractor (Employer A). He assisted in the review of security clearance applications (SCA), produced final reports of investigation, and advised investigators. He left this job and, after a period of unemployment, took one with another Government contractor (Employer B). In this job he reviewed and updated personnel security paperwork to ensure that all required data was provided. He also obtained information from applicants and updated databases. Employer B terminated Applicant's employment because of allegations of time sheet falsifications.

After this, Applicant worked for yet another Government Contractor, (Employer C). His employment was conditioned upon his eligibility for a security clearance. Upon a determination that he was not eligible for a clearance, and after concluding that there was no other position with the company that Applicant could fill, C terminated his employment.

Applicant then worked for another contractor (Employer D) before taking his current job. His duties for D entailed reviewing SCAs and other security related functions. In his current job Applicant performs security tasks, including reviewing and processing SCAs.

Applicant submitted SCAs in 2006 and 2009. In 2006, he omitted the nonjudicial punishment actions, although the information was explicitly required to be disclosed. He also failed to disclose several delinquent debts.

¹The record shows that Applicant was punished under Article 15, UCMJ, for one instance of sleeping on duty and one instance of failure to obey orders. Additionally, his commander vacated a suspended Article 15 punishment for another instance of failure to obey orders. Government Exhibit 6, Record of Nonjudicial Punishment Proceedings.

Applicant omitted a substantial amount of information from his 2009 SCA. For example, he stated that both B and C had laid him off, rather than having terminated his employment. He did not disclose that he had been investigated for a clearance when working for C and found ineligible. He did not disclose his failure to file state and Federal tax returns for tax years 2006 through 2008, nor did he disclose a judgment against him, several delinquent debts, and a delinquency in Federal tax payments. At the hearing, Applicant admitted having failed to file his 2009 and 2010 tax returns and having failed to pay the taxes owed. When asked why he failed to file his returns, he stated that someone advised him not to do so and following that advice was a mistake. Moreover, when interviewed in 2009, Applicant stated that B had laid him off rather than having terminated him for time card fraud.

Applicant acknowledged that many of his answers to the SCA were wrong. He stated that he had answered “no” rather than “yes” to the questions because he wanted to complete the SCA as soon as possible. He did not want to take time to answer in detail about his various issues and intended to address them during his interview.

Applicant enjoys a good reputation for trustworthiness, reliability, and integrity. He submitted numerous certificates of training, most of which concerned training in 2010.

The Judge’s Analysis

The Judge found that Applicant’s various false statements, his instances of military punishment, and his tax delinquencies raised Guideline E concerns. Under Guideline F, the SOR alleged only Applicant’s failure to file state and Federal tax returns. The Judge found that these failures raised concerns as well. The Judge stated that, after considering the evidence as a whole and examining Applicant’s demeanor at the hearing, he found that none of the Guideline E mitigating conditions applied. Applicant made little or no effort to correct his falsifications and that even at the hearing he minimized his behavior and provided explanations that were less than credible.

The Judge also concluded that Applicant had not mitigated the Guideline F concerns. He noted, for example, evidence that in 2009 Applicant was confronted with his tax deficiencies yet he did not file returns for 2009 or 2010. The Judge discounted Applicant’s testimony that he relied on (non-professional) advice in failing to file. He also stated that, while Applicant’s recent tax payments are a step in the right direction, they are not sufficient totally to mitigate his security concerns.

Discussion

Applicant contends that the Judge erred in some of his findings of fact. He denied that he deliberately provided deceptive answers in his SCAs and interview. He also challenged other factual findings. We examine a Judge’s findings to see if they are supported by substantial record evidence. Substantial evidence is “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. *See also* ISCR Case No. 11-13948 at 3 (App. Bd. February 26, 2014). In evaluating

an applicant's intent, we consider his or her false statements in light of the record as a whole. *See, e.g.*, ISCR Case No. 11-12172 at 3 (App. Bd. Jan. 9, 2014).

In this case, the number of false answers contained in two different SCAs, Applicant's experience with the security clearance process, his admission that he answered as he did in order to complete his SCAs quickly, and the Judge's evaluation of Applicant's credibility support the Judge's findings that Applicant's omissions were deliberate and not the result of honest mistake or some other innocent reason. We defer to a Judge's credibility determination. Directive ¶ E3.1.32.1. Applicant also challenged the Judge's finding that his security training had occurred in 2010. Applicant's argument is consistent with the record, in that the bulk of his training certificates are dated 2013. However, to the extent that this is an error, it did not likely exert an effect on the outcome of the case. Considering Applicant's arguments as a whole, we conclude that he has cited to no harmful error in the Judge's findings. The Judge's material findings of security concern are supported by substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 11-02311 at 3 (App. Bd. Nov. 26, 2012).

Applicant cites to his having held a clearance for many years without incident or concern, as well as to other evidence that he believes supports his case for a clearance. However, a Judge is presumed to have considered all of the evidence in the record, and Applicant's arguments are not sufficient to rebut that presumption. *See, e.g.*, ISCR Case No. 11-06649 at 3 (App. Bd. Feb. 21, 2014).

Applicant challenges the Judge's treatment of the mitigating conditions. His arguments amount merely to a disagreement with the Judge's weighing of the evidence. Given the Judge's findings about Applicant's failure to file or pay his taxes, the extent of his false statements, and his lack of credibility at the hearing, the Judge's adverse decision is consistent with the weight of the evidence before him.

The Judge examined the relevant data 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 the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The 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