

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge's finding that Applicant deliberately omitted his federal income liens from his security clearance application is sustainable. Adverse decision affirmed.

CASENO: 10-07602.a1

DATE: 02/17/2012

DATE: February 17, 2012

In Re:)
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 -----) ISCR Case No. 10-07602
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Tovah A. Minster, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 20, 2011, 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 December 8, 2011, after the hearing, 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 erred in finding that Applicant had deliberately falsified his security clearance application (SCA) and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant started a company that served a number of clients, including the Government. He was successful, and the company had no financial problems. In the mid-2000s, Applicant used some of his profits to purchase a coffee shop. That business did not succeed, because of a lack of business. He closed it in 2007. Later, he closed his company as well, due to the recession.

The IRS filed liens against Applicant. The tax debts were related to his business. One lien was for \$193,000 and was due to an improper deduction he took when retrofitting the building where his coffee shop was located. Two other liens were the result of his failure to pay his coffee shop’s payroll taxes. He has a plan for paying off these two debts, and he is attempting to work out a payment plan for the large debt as well.

When he completed his SCA, he failed to disclose that he had not paid federal taxes. He later stated that he had been acting on the advice of an accountant in taking the deduction that resulted in the \$193,000 debt. He also failed to disclose the lien against his property. He stated that, when he filled out his SCA, he had so many debts that he could not keep track of them all.

In the Analysis, the Judge stated that Applicant had been aware of the liens when he completed the SCA and of the fact that he owed the IRS a substantial amount of money. The Judge found that Applicant’s omissions were deliberate and that the record did not support a favorable application of any of the Guideline E Mitigating Conditions.

Applicant contends that the Judge erred in finding that his omissions were deliberate. In analyzing an applicant’s knowledge or intent, a Judge must consider the omissions in light of the entire record. *See, e.g.,* ISCR Case No. 09-08023 at 3 (App. Bd. Sep. 6, 2011). In this case, the Judge’s challenged finding is supported by substantial record evidence.

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). *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 Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, 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