

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s finding that Applicant deliberately omitted financial information from his security clearance application is sustainable. Regarding Guideline F, the Judge’s conclusion that Applicant showed little urgency in resolving his financial problems despite the ability to do so is supported by the record evidence. Adverse decision affirmed.

CASENO: 11-11576.a1

DATE: 07/26/2013

DATE: July 26, 2013

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 Department of Defense (DoD) declined to grant Applicant a security clearance. On November 21, 2012, 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 decision on the written record. On May 29, 2013, after

considering the record, Defense Office of Hearings and Appeals (DOHA) 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 erred in finding that he had deliberately omitted information from his security clearance application (SCA), and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

### **The Judge's Findings of Fact**

The Judge found that Applicant works for a Defense contractor on a military installation. Born in Vietnam, he has variously claimed that he was a U.S. citizen by birth born outside the U.S. and that he was a naturalized citizen.

Applicant is married to his second wife. He worked for a Defense contractor from 1995 to early 2006, at which point he was laid off due to lack of work. He found other work, but he was unemployed from November 2009 to May 2011. Shortly after starting work for his present employer, Applicant completed a SCA, disclosing no issues of security concern. Specifically, he answered "no" to questions about whether he had any debts turned over to collection and whether he had any debts that had been charged off or cancelled for failure to pay.

In fact, Applicant had delinquent debts that had been placed in collection and/or charged off. These debts were an automobile loan, credit card debts, and a debt owed for a wireless service account. When asked during a clearance interview if he had any updates to his SCA, Applicant replied that he did not. When confronted with adverse information from his credit report, Applicant admitted that he had credit card accounts that had become delinquent while he has unemployed. He did not dispute the credit report information, though he attributed his financial problems to his spouse, who handled the bills. Although Applicant stated that he intended to resolve his debts, a subsequent credit report disclosed no progress. Applicant has since retained the services of a credit repair company. Applicant has sent letters of dispute to his creditors, but he provided no corroboration to substantiate the disputes.

### **The Judge's Analysis**

The Judge found that Applicant's financial problems raised concerns under Guideline F. She also concluded that Applicant had failed to demonstrate mitigation. She stated that Applicant's debts became delinquent only within the previous five years and that Applicant had made little progress in resolving them.<sup>1</sup> Though acknowledging evidence that Applicant had experienced unemployment, she stated that his failure to ensure that his wife was paying the family debts was

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<sup>1</sup>See Directive, Enclosure 2 ¶ 20(a): "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

a circumstance within his control.<sup>2</sup> She also stated that Applicant provided no reasonable explanation for having waited as long as he did to obtain professional assistance in resolving his debts<sup>3</sup> and that he had not evidenced a good-faith effort to pay the debts.<sup>4</sup> Insofar as Applicant's delinquent debts totaled about \$28,000 by the close of the record with no repayment plans in place, the Judge concluded that he had not presented sufficient evidence that his financial problems were behind him.

Regarding the Guideline E concerns, the Judge found that Applicant had deliberately omitted his charged off/collection accounts. Applicant admitted to the interviewer that he had been aware that he had significant debts that had become delinquent while he was unemployed. Three of these debts had been in charge-off status for at least a year. "[T]he evidence established not only that the debts . . . should have been reported on his [SCA] . . . but also that he knew about those debts."<sup>5</sup> Decision at 7. She concluded that his false statements were serious and recent and that there is a paucity of record evidence to support a conclusion that Applicant had mitigated these concerns.

In the whole-person analysis, the Judge stated that Applicant had shown little urgency in resolving his financial problems, despite an apparent ability to have done so. She also stated that by failing to provide accurate information on his SCA, Applicant demonstrated a tendency to act in his own self-interest, raising doubt as to whether he can be counted on to protect national security information.

## **Discussion**

Applicant challenges the Judge's conclusion that he had deliberately left information out of his SCA. 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. 10-07602 at 2 (App. Bd. Feb. 17, 2012). In this case, the Judge noted evidence of Applicant's various omissions from the SCA, evidence that he did not acknowledge his debts until confronted by the interviewer, and the relative lack of evidence of innocent mistake. The Judge's finding that Applicant deliberately omitted the information at issue in this appeal is sustainable.

Applicant cites to evidence favorable to him, including his having hired a credit company

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<sup>2</sup>*See* Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

<sup>3</sup>*See* Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolve or is under control[.]"

<sup>4</sup>*See* Directive, Enclosure 2 ¶ 20(d): "the individual initiate a good-faith effort to repay overdue creditors or otherwise resolve debts[.]" The Judge also considered Directive, Enclosure 2 ¶ 20(e) concerning Applicant's claim to have disputed some of his debts, resolving this issue against Applicant.

<sup>5</sup>In addition to the questions at issue in this appeal, Applicant answered "no" on his SCA to questions about the existence of debts delinquent for more than 180 days and of debts currently delinquent for more than 90 days. These answers were also false. Although they were not alleged, it was proper for the Judge to consider them in evaluating Applicant's case for mitigation. *See, e.g.*, ISCR Case No. 08-06859 at 4 (App. Bd. Oct. 29, 2010).

to assist him in resolving his debts. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012). The Judge discussed the credit company, but her overall conclusion was that, despite this evidence, Applicant had substantial debts for which he had not established repayment plans or otherwise shown evidence of resolving. Given the record that was before her, the Judge’s conclusions are sustainable. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record.

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: Jeffrey D. Billett  
Jeffrey D. Billett  
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