

KEYWORD: Guideline F

DIGEST: In evaluating an applicant's intent a Judge should consider the omissions or false statements in light of the record as a whole. Adverse decision affirmed.

CASENO: 12-05607.a1

DATE: 09/05/2014

DATE: September 5, 2014

In Re:)
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 -----) ISCR Case No. 12-05607
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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 September 17, 2013, 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 June 27, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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 his omissions from the security clearance application (SCA) were deliberate 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 seeking a security clearance in connection with his employment by a Defense contractor. His SOR alleges delinquent debts totaling over \$54,000. The debts are for judgments levied against him, medical expenses, telephone services, credit cards, etc. Several of these debts were turned over to collection agencies and/or charged off by the creditor. Applicant presented no evidence of financial counseling. He experienced unemployment off and on (for a total of about 8 months) between 2008 and 2011. He has been employed since early 2012, however, and has a monthly remainder of about \$2,000. The SCA contained several questions about finances. Applicant answered "no" to three of them: whether there were any judgments against him, whether any of his debts had been turned over to collection agencies, and whether any of his debts had been charged off or cancelled. These "no" answers were false, in light of the evidence summarized in the preceding paragraph. The Judge found that these omissions were deliberate, stating that it is not reasonable to believe that Applicant was unaware of the extent of his financial problems. Applicant submitted no evidence about the quality of his work performance, nor did he present any character references. The Judge stated that he was not able to examine Applicant's demeanor or credibility in person, insofar as he had elected a decision without a hearing.

The Judge's Analysis

In concluding that Applicant had failed to mitigate the concerns in his case, the Judge cited to evidence that Applicant's financial problems went back as far as 2002, but, with a couple of exceptions, his SOR debts remained unresolved at the close of the record. He stated that, despite evidence of unemployment, a circumstance beyond his control, Applicant had not demonstrated responsible action in regard to his financial problems. The Judge stated that Applicant failed to corroborate his claims of debt repayment. He also stated that Applicant's claim that he merely overlooked the questions in the SCA "strains credulity." Decision at 9.

Discussion

Applicant claims that the Judge erred in finding that his omissions from the SCA were deliberate. We examine a Judge's findings to see if they are supported by "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. 12-04540 at 6 (App. Bd. Mar. 19, 2014). In evaluating an applicant’s *men rea*, a Judge should consider the omissions or false statements in light of the entire record. *Id.* In this case, the Judge’s finding that Applicant’s claims of simple mistake were not credible is supportable, given the extent of his financial problems. We give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. We also note Item 8, an affidavit prepared by Applicant in connection with a clearance adjudication in 2002. In this document, he asserts that he “did not intentionally omit debts from the security form . . . I didn’t mention anything other than the car repossession, because I had just simply forgotten about all the other things. There is no reason that I would deliberately omit or hide information, as I’m well aware that the government would have access to my credit history.” That he had previously been questioned about omissions from an SCA undercuts his claims of mistake or oversight, as does the extent of his financial problems. We find no error in the challenged finding.

Applicant cites to evidence of his military career, his having held a clearance for many years, and steps he has taken to address his problems. Applicant’s arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-09160 at 3 (App. Bd. Jul. 3, 2013). The Judge’s conclusions about a paucity of mitigating evidence were consistent with the record before him and support his adverse decision. Applicant’s arguments are not sufficient to show that the Judge mis-weighed the evidence.

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board