

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant has not overcome the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 14-00952.a1

DATE: 03/13/2015

DATE: March 13, 2015

---

In Re: )  
 )  
 )  
 ----- ) ISCR Case No. 14-00952  
 )  
 )  
 Applicant for Security Clearance )  
 )  
 )

---

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Nicole A. Smith, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 24, 2014, 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 hearing. On November 5, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.<sup>1</sup>

The Judge made the following findings: Applicant completed a security clearance application (SCA) in 2002. When asked if she had filed a bankruptcy petition under any chapter of the bankruptcy code in the past seven years, she answered "no." She also answered "no" to questions that asked if she had debt delinquencies over 180 days on any current debts. Applicant had filed a Chapter 13 bankruptcy petition in 1998. When asked why she did not disclose the bankruptcy and her previous delinquent debts, she stated that she was told by a recruiter that because she had completed the Chapter 13 payment plan, she did not have to disclose it. Applicant was 33 years old when she completed the SCA. She indicated that it was a scary environment for her when she completed the SCA. She did disclose a bad check offense, a public intoxication charge, and two speeding tickets on the SCA.

In September 2013, Applicant completed her most recent SCA. One question asked if, in the past seven years, she had any bills or debts turned over to a collection agency, or had an account or credit card suspended, charged off, or canceled for failure to pay as agreed. It also asked if she had been over 120 days delinquent on any debt not previously entered. She answered "no" to these questions. These responses were incorrect. Applicant stated that on the day she completed the SCA she was very busy. She had a notebook with all of her past debts listed in it. It was the first time she completed the SCA electronically, and the Internet kept going down and losing her data, so she repeatedly had to start over. She stated that each time she started over, she disclosed all of her delinquent debts. She stated that her "no" answer was a mistake, and she didn't know why she answered "no." She admitted her financial situation was embarrassing and she did not want to share it with her co-workers, who were in close proximity to her in the crowded room where she filled out the SCA. During a subsequent interview with a government investigator, Applicant stated that she believed most of her accounts were current or were paid in full, and she had not listed the accounts on the SCA because she thought she only had to list currently delinquent or collection accounts. This explanation of how she answered the government investigator is inconsistent with the statements she gave at the hearing wherein she stated that she actually listed the accounts each time she attempted to complete the online application.

The Judge reached the following conclusions: Applicant told the investigator she did not think she had to include her past delinquent debts (on her 2013 SCA) because most of them were now current. This explanation contradicts her testimony. At the hearing, she stated she thought she included her delinquent debts on the SCA, and somehow the electronic SCA kept dumping her

---

<sup>1</sup>The Judge entered formal findings favorable to Applicant under Guideline F. Those favorable findings are not at issue on appeal.

information. She explained that each time she went back and included her past delinquent debts. Then she testified that somehow she overlooked her final submission where she mistakenly answered

“no” to the financial delinquency questions. She then certified and swore her answers were true, but she failed to review the final version of the SCA where she stated she must have mistakenly answered “no” to the question. Applicant’s testimony was not credible. She deliberately concealed her past financial problems. She did not promptly make a good-faith effort to correct her omissions. There is insufficient evidence to conclude that there were unique circumstances surrounding her omissions. Her deliberate concealment and falsification cast doubt on her reliability, trustworthiness, and good judgment.

Applicant argues that the Judge did not consider certain evidence when she determined that Applicant made inconsistent statements and was not a creditable witness. Applicant’s brief asserts that there were ambiguities in Applicant’s statements to the government investigator during her interview in 2013 after completion of the 2013 SCA. Applicant asserts that these ambiguities were not considered by the Judge. Also, Applicant states that the ambiguities in the interview statement were left unresolved as a result of the Judge’s failure to adequately explore the statements made during the interview through questioning at the hearing. Applicant’s arguments on this point fail to establish error on the part of the Judge.

The Judge found that Applicant’s explanations as to why she did not disclose her numerous debts on her 2013 SCA lacked credibility. The gravamen of her conclusion on this point was the significant disparity between Applicant’s explanation of her SCA answer during the interview, and her explanation of same during her hearing testimony. Regardless of any ambiguities, Applicant’s statements to the investigator involved descriptions of her perceptions as to the status of her debts, and what she thought the SCA required her to list. By contrast, her hearing testimony focused on environmental factors that she claimed affected her ability to complete the SCA accurately, such as problems with the on-line e-QIP process (which kept dumping her entries in the financial records section of the SCA, according to her testimony), the fact that the office was very busy at the time, and the fact that she was required to complete the SCA electronically in a crowded room full of people. Applicant’s hearing testimony also included her statement that she really didn’t know why she answered “no” on the SCA, or couldn’t explain why the SCA reflected a “no” answer.

A Judge is presumed to have considered all the evidence in the record unless she specifically states otherwise. *See, e.g.,* ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Applicant has not demonstrated any aspect of the case record or the Judge’s actions that overcome this presumption. Additionally, the Board gives deference to the credibility determinations of the Judge. Directive, ¶ E3.1.32.1. After a review of the record and the Judge’s decision, including the evidence discussed in the preceding paragraph, the Board concludes that her negative assessment of Applicant’s credibility is reasonably supported by the evidence, and that there is nothing in the record that significantly detracts from that credibility determination.

The Board finds no reason to believe that the Judge did not properly weigh the evidence or that she failed to consider all the evidence of record. *See, e.g.,* ISCR Case No. 11-06622 at 4 (App.

Bd. Jul. 2, 2012). We have considered the totality of Applicant’s arguments on appeal and find no error in the Judge’s ultimate conclusions regarding mitigation. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Furthermore, the burden of persuasion is held by Applicant. (See Directive ¶ E.3.1.15). To the extent an applicant has presented ambiguous or contradictory testimony, it is not consistent with the ultimate burden for the Judge to construe inconsistencies in an applicant’s favor.

The Board does not review a case *de novo*. 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 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). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

### Order

The decision of the Judge 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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge

Member, Appeal Board