

KEYWORD: Guideline F; Guideline E

DIGEST: Based on the record that was before her, the Judge’s reliance on Applicant’s inconsistent statements was supportable. There is no reason to disturb the Judge’s credibility determination. Adverse decision affirmed.

CASENO: 14-03069.a1

DATE: 07/30/2015

DATE: July 30, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-03069
)	
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 July 30, 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 decision on the written record. On May 22, 2015, after

considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel 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 Judge erred in her credibility determination; whether the Judge erred in finding that Applicant had deliberately omitted information from his security clearance application (SCA); 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 works for a Federal contractor and is seeking a security clearance for the first time. He owes 17 delinquent debts, totaling \$30,000, the majority of which are for medical expenses. Applicant's financial problems resulted from a period of unemployment, followed by about 2 years of underemployment during which he did not have adequate medical insurance. In addition, Applicant's wife's business suffered during an economic downturn. He and his wife consulted a bankruptcy attorney; however, they decided to sell off assets and draw down their retirement accounts to pay their debts. In completing his SCA, Applicant did not disclose any derogatory information about his finances. In his answer to the SOR, he claimed that he had mistakenly submitted his SCA before he had provided financial input. He claimed that he advised his human resources manager about this problem. He also claimed that, at the beginning of his clearance interview, he told the investigator that he had accidentally submitted an incomplete SCA before being confronted with information about his debts. The interview summary presented Applicant as stating he did not list his delinquent debts because he had not been in contact with his creditors and was not aware of the debts. He told the investigator that he had some delinquent accounts but was not able to recall all of them.

The Judge's Analysis

The Judge acknowledged that Applicant's financial problems were caused by circumstances outside his control. However, she concluded that he had not acted responsibly in regard to his debts, citing to evidence that he has held steady employment since 2011 but has made little effort to pay his creditors. Moreover, she found no evidence that Applicant had received financial counseling. The Judge found that Applicant's omission of his delinquent debts from the SOR was deliberate, noting inconsistencies between his SOR Answer and his statements during his interview. Characterizing the version in the SOR Answer as "an elaborate story," the Judge stated that Applicant had not provided corroboration for this account. Decision at 5. She concluded that these inconsistent statements undermined Applicant's credibility. She stated that this omission, and Applicant's failure to take responsibility for it, raised unresolved concerns about his security worthiness.

Discussion

In pressing his arguments on appeal, Applicant includes matters from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant challenges the Judge's credibility determination, arguing that the record supports his explanation that his omission was

purely accidental. We give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Inconsistent statements can form the basis of a negative assessment of a witness's credibility. *See, e.g.*, ISCR Case No. 12-00609 at 5 (App. Bd. Apr. 4, 2014). Based on the record that was before her, the Judge's reliance on Applicant's inconsistent statements was supportable. We find no reason to disturb the Judge's credibility determination. Insofar as Applicant's argument challenges the Judge's finding about the deliberate nature of his omission, we conclude that the Judge properly evaluated Applicant's intent in light of the record as a whole. *See, e.g.*, ISCR Case No. 11-14265 at 3 (App. Bd. Aug. 28, 2013). We find no error in the challenged finding.

Applicant cites to evidence that he argues is favorable to him, including statements in the interview summary to the effect that he is meeting his financial obligations and that there is nothing in his background for which he could be blackmailed or coerced. However, these comments summarize Applicant's answers to the interviewer. They do not constitute the interviewer's considered opinion as to Applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 14-02447 at 6 (App. Bd. Feb. 26, 2015). In any event, even if an investigator provided such an opinion it would not bind the DoD in its evaluation of an applicant's case. Applicant also cites to evidence that he considered bankruptcy but decided instead to resolve his debts in what he termed a responsible manner. Applicant has not rebutted the presumption that the Judge considered all of the evidence, nor is his argument sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-00723 at 3 (App. Bd. Feb. 4, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Promises to resolve debts in the future are not a substitute for a track record of debt resolution. *See, e.g.*, ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010). Refusal to provide truthful answers to officials during the security clearance process "will normally result in an unfavorable clearance action[.]" Directive ¶ 15(b). "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