

KEYWORD: Guideline F

DIGEST: The Judge’s credibility determination is sustainable. Adverse decision affirmed.

CASENO: 14-04226.a1

DATE: 08/18/2015

DATE: August 18, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-04226
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 5, 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 June 5, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served in the U.S. military for five years, receiving an honorable discharge. He has worked for Government contractors since 2002. Married a second time, he has one minor child.

Applicant's SOR lists delinquent debts totaling nearly \$107,000. These debts include a large one for a second mortgage on a home. He contends that he was lied to about balloon payments that doubled his monthly payments. The home was eventually the subject of a foreclosure action. Applicant provided no corroboration for his contention that the second mortgage was cancelled.

Applicant has a delinquent debt for a vehicle loan. The vehicle was repossessed after his ex-wife failed to make payments on it as required by the divorce settlement. Applicant did not provide a court document showing a disposition of the marital property. He also owes a medical debt that he believes should have been paid by his health insurance. He claims that the creditor is no longer willing to accept payment on a charged-off debt. He failed to provide any documentation from the creditor. Applicant's SOR lists three other debts that the Judge found had been resolved.

When he completed his SCA, Applicant answered "no" to questions about the following: whether he had had debts turned over to collection agencies within the previous seven years; whether he had been over 180 days delinquent on any debt in the previous seven years; and whether he was currently over 120 days delinquent on any debt. He testified that he thought his debts were older than seven years, so he thought he did not have to disclose them. The Judge found that Applicant's explanation was not credible.

Applicant testified that he pays his debts, although he did not present a budget, account statements, or asset statements to demonstrate his financial status. He enjoys a good reputation for the quality of his work performance. In addition, he also received some awards while in the military.

The Judges's Analysis

The Judge stated that Applicant had failed to act in a responsible manner regarding his three largest debts. She noted that reliance upon the charged-off status of a debt does not equate to responsible action. She stated that Applicant's debts are ongoing and there is no evidence of changed

circumstances. Regarding Guideline E, the Judge stated that Applicant had done nothing to correct his omissions and provided no reason to believe that he was acting upon improper advice.

In the whole-person analysis, the Judge noted Applicant's military service and that he had held a clearance for many years without incident or concern. However, she reiterated her conclusion that he had not shown responsible behavior in regard to his debts. She also stated that Applicant's veracity remained a concern.

Discussion

Applicant denies that he intentionally omitted the information from his SCA and challenges the Judge's finding to the contrary. 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. In evaluating an applicant's *mens rea*, a Judge must consider the applicant's answers in light of the totality of the record evidence. *See, e.g.*, ISCR Case No. 14-01607 at 3 (App. Bd. Apr. 9, 2015).

We note the Judge's finding, contained in the Analysis section of the Decision, that Applicant "clearly knew he had mortgage debts that were delinquent within the seven-year time frame." Decision at 7. This finding is consistent with the record that was before her. We also note her negative credibility determination, to which we are required to give deference. Directive ¶ E.1.32.1. The Judge made a finding to the effect that Applicant attributed the omission to his belief that his debts were too old to require disclosing them. At the hearing, however, he appeared to contend that he had made a simple mistake in arithmetic.¹ These explanations are not totally consistent. In any event, even if there were no inconsistencies, a reasonable person in the Judge's position could find that Applicant's claim to have believed that none of his SOR debts needed to be reported lacked credibility. We find no reason to disturb the Judge's credibility determination. We conclude that the Judge's finding is supported by substantial record evidence.

Applicant has cited to some Hearing Office cases that, he believes, support his effort to demonstrate mitigation. We have given these cases due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03223 at 2 (App. Bd. Apr. 17, 2015). The cases Applicant has cited contain certain mitigating circumstances that are not present in his own. For example, in one of them, the applicant had disclosed a willful omission from his SCA before having been confronted with it. The cases that Applicant has cited are not sufficient to undermine the Judge's overall decision.

¹Applicant completed his SCA in 2012. He testified, "If it was 2012, I should have gone back to 2005. That is a true statement. *I thought I did.*" Tr. at 55-56 (emphasis added). "I'm not exactly sure how my math worked out at that time. I just didn't list it." Tr. at 62.

Applicant contends that the Judge failed to consider all of the record evidence. This argument is not sufficient to rebut the presumption that the Judge considered all of the evidence. Neither is it sufficient to show that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 12-01578 at 4 (App. Bd. Sep. 24, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “Failure or inability to . . . satisfy debts . . . may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations[.]” Directive, Enclosure 2 ¶ 18. Under Guideline E, “any failure to provide truthful and candid answers during the security clearance process . . . will normally result in an unfavorable clearance action[.]” Directive, Enclosure 2 ¶ 15. “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