

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant requests that we grant him a 30 day extension in which to obtain additional evidence. Our scope of review is limited to the issues outlined in Directive ¶ E3.1.32. We have no authority to grant an applicant an extension for the purpose of obtaining more evidence. Adverse decision affirmed.

CASENO: 14-04281.a1

DATE: 03/21/2016

DATE: March 21, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-04281
)	
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 March 28, 2015, 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 December 24, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge erred in finding that he had deliberately omitted material information from his security clearance application (SCA), whether he was denied a reasonable opportunity to present documentary evidence, 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 74 years old and has been employed by Federal contractors since about 1999. Before that he worked for 25 years as a Federal police officer. He also served in the military for three years, receiving an honorable discharge. He has been favorably investigated for access to classified information several times in the past.

Applicant’s SOR lists a number of delinquent debts, for such things as cable services, telephone services, two automobile loans that resulted in repossession, and a home improvement debt. The total amount of the debt alleged in the SOR is nearly \$23,000.

When completing his security clearance SCA, Applicant did not disclose any of the delinquent debts. During his subsequent interview, he characterized his financial outlook as “positive.” Decision at 3. Although he stated to the investigator that he had experienced problems in the past, he asserted that his present obligations were paid in a timely manner. When the investigator confronted him with the debts contained in his credit report, Applicant denied knowledge of several of them. He acknowledged that he had defaulted on his payments for an automobile because of expensive medical treatments that he was undergoing at the time. He stated that he did not consider this to have been a repossession because he voluntarily relinquished the vehicle to the creditor.¹

Applicant also stated that he had repaid part of the home improvement loan, although he did not provide corroboration. He stated to the clearance investigator that he would research his debts and make payments on as many as he could, although he did not know how long this would take. He provided no information to show that he had done so.

¹“When [Applicant] was asked if he knew what a repossession was, [Applicant] answered that he knew what a repossession was and that it was a mistake to omit this information from the security questionnaire.” Item 4, Clearance Interview Summary, at 8.

The Judge's Analysis

The Judge noted Applicant's claims that some of his debts had been paid. He found that Applicant had submitted no documentation to substantiate these claims or to show the status of the debts. The Judge noted Applicant's promise to the investigator that he would research his debts and make payments. He stated that Applicant had two opportunities to show that he had done so, in his answer to the SOR and later in his response to the File of Relevant Material (FORM). However, he failed to do so. The Judge concluded that Applicant's financial problems were not under control. In the Judge's view, Applicant had not been reasonable or responsible in regard to his debts. He stated that this was a reason to believe that Applicant may not protect classified information.

Regarding Guideline E, the Judge found that, during his interview, Applicant had discussed the details of some of his debts when prompted to do so by the investigator. He concluded that Applicant knew that he had delinquent debts at the time he completed the SCA and, accordingly, that his failure to list any of them was a deliberate effort to deceive. Moreover, Applicant did not disclose his debts until confronted with them by the interviewer. He concluded that Applicant had not mitigated the concerns arising from his delinquent debts.

Discussion

Applicant challenges the Judge's finding that he had deliberately failed to disclose his debts on his SCA. 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. When evaluating the deliberate nature of an applicant's omissions or false statements, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). In the case before us, the SCA questions were clear and unambiguous, and the Judge could reasonably believe that Applicant was aware of the kind of information that the Government seeks in adjudicating a clearance, in light of the Judge's findings that Applicant had considerable prior experience in submitting SCAs. Applicant discussed some of his delinquent debts with the investigator, as the Judge found, thereby undermining any claim of ignorance. We also note evidence that, during his interview, Applicant acknowledged that he had intentionally left two of these debts off his SCA. Item 4 at 7-8. We find no reason to disturb the challenged finding.

Applicant states that he believed that a response to the FORM had been made on his behalf. He asserts that he had indeed researched his debts and made payments, as he promised the investigator that he would do. He claimed that he thought an official at his place of employment had submitted to the Judge evidence of these payments.² Applicant's brief contains matters from outside

²In his Appeal Brief Applicant states that, in June 2014, he and the official reviewed his bills. "I immediately contacted the bill collectors and increased payment amounts . . . and paid off several that were in collection status." The documents attached to the brief are acknowledgments from creditors that accounts have been paid or are the subject of payment plans. These documents are dated June 2015 and after. They all post-date the SOR. On their faces they do not corroborate Applicant's claim to have paid off at least some of his debts in mid-2014.

the record, including some attached documents that he asserts constituted the response that he thought had been made on his behalf. We are generally precluded from considering new evidence on appeal. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon threshold issues such as due process. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015).

The record shows that DOHA provided Applicant with guidance about his right to make a documentary response to the FORM. This information was contained in the FORM itself, as well as in the cover letter that accompanied it, receipt of which Applicant acknowledged. This guidance was sufficient to apprise a reasonable person of his right and obligation to submit documentary evidence for the Judge's consideration. Applicant provided no corroboration for his claim that a named "security rep" at his place of employment had been authorized to do this on his behalf but had failed to follow through. Under the facts of this case, Applicant's uncorroborated assertions are not enough to constitute a *prima facie* showing that he reasonably attempted to respond to the FORM and that the attempt failed through no fault of his own. *See* ISCR Case No. 14-00967 at 2 (App. Bd. Jan. 20, 2015). We find no reason to conclude that Applicant was denied a reasonable opportunity to present documentary evidence in his behalf.

Applicant requests that we grant him a 30 day extension in which to obtain additional evidence. Our scope of review is limited to the issues outlined in Directive ¶ E3.1.32. We have no authority to grant an applicant an extension for the purpose of obtaining more evidence. *See, e.g.*, ISCR Case No. 14-00151 at 3 (App. Bd. Sep. 12, 2014).

Much of Applicant's brief consists of new evidence which, as we noted above, we are not permitted to consider. Viewing the record as a whole, we conclude that 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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board