

KEYWORD: Guideline F; Guideline E

DIGEST: We conclude that the Judge’s finding about the deliberate nature of Applicant’s omission from his security clearance application is supported by substantial evidence, given the clarity of the questions, Applicant’s experience with holding a clearance, and his inconsistent statements. Adverse decision affirmed.

CASE NO: 15-00254.a1

DATE: 08/26/2016

DATE: August 26, 2016

In Re:)	
)	
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)	ISCR Case No. 15-00254
)	
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 August 26, 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 hearing. After the hearing,¹ Defense Office of Hearings and

¹The Decision is undated. The record contains a DOHA memorandum that states that the Decision was issued on June 6, 2016.

Appeals (DOHA) Administrative Judge Paul J. Mason 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 his credibility determination; whether the Judge erred in finding that Applicant's omission of information from his security clearance application (SCA) was deliberate; and whether the Judge failed to consider all of the evidence in the record, with the result that his adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is married and has two children, as well as two stepchildren. He pays \$600 a month child support for one of the stepchildren. He served in the National Guard from 1985 to 2006. He served in an active duty status from 2006 to early 2007. At that point he believed that he would receive another assignment within a month. He was unemployed until mid-2007, when he returned to active duty. In June 2013, Applicant retired as a major. He has held a clearance since 2006 and was continuously employed from mid-2007 until late 2015.

Applicant's SOR listed four delinquent debts, for such things as a consumer good, credit cards, and telephone services. Applicant has not resolved any of these debts. For one of them, Applicant argued that its having been dropped from his credit report corroborates his claims to have resolved it. The Judge found, however, that even if a debt is no longer on a credit report it can still be unpaid. Applicant got in touch with a debt consolidation company but did not engage its services, in light of the high enrollment fee and no guarantee of success.

When he completed his SCA, Applicant did not disclose his delinquent debts. In a subsequent interview, he stated that he thought his debts had been paid and was unaware of any debts that were delinquent. In his SOR response, he stated that "he was hampered by the number of questions in the [SCA]" and the time it took to complete the form. He did not explain the inconsistency between these two explanations.

At the hearing, he testified that when completing his form he simply did not think of a couple of his debts. He also testified that he made a mistake in reading the questions. He also testified that, even though he was a retired military officer, he had trouble comprehending the questions.

Applicant enjoys an excellent reputation for honesty and trustworthiness. At work, he is a team player.

The Judges' Analysis

Regarding the Guideline F security concerns, the Judge stated that Applicant had not provided enough information to permit a conclusion that his financial problems are behind him or that he had taken responsible action in regard to his debts. He concluded that there is no evidence that Applicant's debts are under control. He stated that Applicant did not corroborate his claim to have disputed one of the debts.

Under Guideline E, the Judge found that Applicant's omission of his debts from his SCA was deliberate. He stated that Applicant knew about two of the accounts at the time he completed the form and that he had made inconsistent statements about the matter. The Judge concluded that Applicant failed to mitigate concerns arising from his deliberate omission, citing to his continued insistence that he did nothing wrong.

In the whole-person analysis, the Judge stated that Applicant made no efforts to contact two of his creditors and had not been aggressive in attempting to resolve his financial difficulties. He stated that the fact that certain debts are no longer on his credit reports does not show that they have been paid or settled. He stated that Applicant has not shown a sufficient effort at debts resolution to justify a favorable decision.

Discussion

Applicant challenges the Judge's credibility determination. He states that the fact that some debts were dropped from Applicant's credit report lends credibility to his claim of debt resolution. He also states that the Judge did not properly evaluate his credibility in making findings and conclusions under Guideline E. We are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. In this case, we find no reason to disturb the Judge's credibility determination. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015) for the proposition that a debt being dropped from a credit report does not establish meaningful evidence as to the debt's disposition. *See also* ISCR Case No. 14-01056 at 3 (App. Bd. Aug. 17, 2015) (Inconsistent statements can undermine an applicant's credibility.)

We conclude that the Judge's finding about the deliberate nature of Applicant's omission from his SCA is supported by substantial evidence, given the clarity of the questions, Applicant's experience with holding a clearance, and his inconsistent statements. *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

Applicant's arguments on appeal are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). Applicant cites to a Hearing Office case that, he believes, supports his effort to demonstrate mitigation. We give this case due consideration as persuasive authority. However, Hearing decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board