

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant argues that he is not financially overextended and that several of the financial consideration mitigating conditions should apply to him. Those arguments, however, are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 15-03727.a1

DATE: 09/21/2016

DATE: September 21, 2016

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 15-03727

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 November 9, 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 June 30, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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 making findings of fact and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He is married and does not have any children. He owes about \$36,000 on three delinquent accounts and owed about \$2,400 on two state tax liens. In his Answer to the SOR, he admitted each of the debts, claimed he paid the two state tax liens, and was negotiating settlement agreements on the three other accounts. He provided proof of credit card payments toward the state tax liens, but did not submit any documentation showing settlement agreements or repayment plans were established for the three other accounts.

In his Response to Department Counsel's File of Relevant Material (FORM), Applicant submitted a statement from his wife. In that statement, she claimed she made financial mistakes and hid everything from him. She had lost her job of 10 years that caused her "terrific strain." Decision at 3. She spent several thousand dollars on a lawsuit against her former employer that she lost. Applicant did not submit any documents to demonstrate objectively the veracity of any of these statements. He did not relate them in a chronological order to his failure to pay his debts. *Id.*

Applicant submitted a security clearance application (SCA) in June 2012. In that document, Applicant responded to the questions in Section 26 pertaining to his delinquent debts in the negative. He denied having debts turned over to a collection agency; denied having any account suspended, cancelled, or charged off; and denied being over 120 days delinquent on any debt. He did not disclose the three delinquent accounts alleged in the SOR. In his Answer to the SOR, Applicant admitted the falsification allegation, but stated he did not deliberately falsify the answers to any questions on his SCA.

The Judge's Analysis

The Judge found in favor of Applicant on the two state tax liens and against him on the three other debts. He noted that, from 2009 to present, Applicant accumulated the five debts totaling about \$38,000 that remained unpaid or unresolved when the SOR was issued. These debts were delinquent before he completed his SCA. Applicant neither submitted documents pertaining to the loss of his wife's income nor demonstrated that he acted responsibly in this situation because he did not check that the debts were being paid. He claimed he was investigating or paying the three SOR debts, but did not provide any evidence of such action.

The Judge noted that Applicant did not disclose his financial delinquencies in his SCA and disclaimed any intentional action in doing so. In finding that Applicant falsified his SCA, the Judge stated:

However, Applicant is responsible for knowing his financial status before he

completes the [SCA] and signs it stating the answers to all sections are true and correct to the best of his knowledge. The first three delinquent debts listed in the SOR became so before 2012. Applicant also claims his wife lost her job, had to take care of her disabled mother, became disabled herself, and had to suffer the stress of her father's death and that of a friend in 2007. She submitted a statement that not paying the debts was all her fault. However, Applicant is the responsible party seeking a security clearance. There is no evidence to verify any of his claims against his wife.¹

The Judge concluded that none of the mitigating conditions applied to Applicant's falsification and that his deliberate hiding of the debts and blaming of his wife for the delinquencies makes him vulnerable to exploitation as he may try to keep the truth from anyone in the future.

Discussion

In the appeal brief, Applicant provided work performance reviews, documents showing payments on various debts, Social Security documents, and part of a credit report. He also provided comments not in the record contradicting some of the Judge's findings. Those documents and comments constitute new evidence that the Appeal Board is prohibited from receiving or considering. Directive ¶ E3.1.29.

Applicant claims the Judge erred in the findings of fact. For example, he states that he has two grown stepchildren. However, his SCA, which the Judge relied upon, did not list that he had any children or stepchildren. Applicant also claims that the amounts listed for the delinquent debts in the decision were incorrect, but the amounts he cites for those debts appear to be based on new evidence that the Appeal Board cannot consider. *Id.* The Judge's material findings concerning the debts are based upon substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the record evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. July 25, 2014).

Applicant also argues that he is not financially overextended and that several of the financial consideration mitigating conditions should apply to him. Those arguments, however, are not 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. 14-06634 at 2 (App. Bd. Apr. 28, 2016).

Applicant further contends that he did not deliberately omit information about the debts in his SCA. He claims his wife hid the information from him, which was corroborated in her letter provided in his Response to the FORM. In concluding that Applicant falsified the SCA, the Judge stated that Applicant was responsible for knowing his financial status before completing the SCA and acknowledging that all of the answers were true and correct to the best of his knowledge. This statement reflects that the Judge may have applied an incorrect standard for making a falsification determination. A falsification must be deliberate. Directive, Enclosure 2 ¶ 16(a). As the Appeal Board stated in the past, mere proof of an omission or an incorrect answer, standing alone, does not

¹ Decision at 8.

establish or prove an applicant's intent or state of mind when he or she submitted a SCA. While as a general proposition applicants should know the status of their finances before completing a SCA, an applicant's lack of knowledge of his debts does not establish a falsification. For a finding of falsification to be sustainable, the Judge would still have to make findings about Applicant's culpable state of mind that are reasonably supported by the record evidence. *See, e.g.*, ISCR Case No. 05-03472 at 6 (App. Bd. Mar. 12, 2007). The Judge's apparent error in applying the wrong standard, however, is harmless because it most likely did not have an impact on the ultimate decision. In this case, the Judge's adverse findings about Applicant's debts were sufficient to support the unfavorable security decision. *See, e.g.*, ISCR Case No. 14-02619 at 2 (App. Bd. Apr. 7, 2016).

In conclusion, 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: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board