

KEYWORD: Guideline F; Guideline E

DIGEST: Error in the Judge’s findings of fact was not likely to have affected the outcome of the case. Therefore, it was harmless. Applicant failed to rebut the presumption that the Judge had considered all of the record evidence. Adverse decision affirmed.

CASE NO: 08-11735.a1

DATE: 09/21/2010

DATE: September 21, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-11735
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 14, 2009, DOHA 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, 2010, after considering the record, Administrative Judge Roger C. Wesley 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 certain of the Judge’s findings of fact were supported by substantial record evidence; whether the Judge failed to consider all of the record evidence; whether the Judge mis-weighed the record evidence; and whether the Judge’s

adverse security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a systems administrator for a Defense contractor. He served in the Army from 1998 to 2001. Following his discharge, he experienced difficulties finding work. While unemployed, he lived with his parents. He opened different checking accounts using false identification for each. He wrote checks on these accounts and cashed them to defray living expenses. He was eventually arrested and charged with forgery. Applicant completed the probation which resulted from his forgery conviction in 2007.¹ Due to his unemployment, Applicant acquired a substantial amount of delinquent debt. Although he demonstrated that he paid off many of the debts alleged in the SOR, he did not corroborate his claims of payment for others, some large, for example, a \$7,326 debt apparently related to medical treatment and a \$3,135 collection account.

Applicant contends that the Judge's findings of fact contain errors. For example, he states that he was not actually convicted of forgery. Rather, the case was dismissed after he completed the conditions of his deferred adjudication. We note the interview summarized in Item 7 (see Note 1). Applicant stated that he pled guilty to forgery and was thereupon found guilty. He also stated that the charges were later dismissed and, therefore, he did not have a conviction. This is consistent with Item 8, FBI Identification Record. However, even if the Judge's characterization of this case is erroneous, in that Applicant does not currently have a conviction on his record, it is harmless error. The Judge relied on the underlying circumstances of the case rather than its ultimate legal disposition. Applicant also challenges the Judge's statement in the Analysis portion of the decision that he had written the fictitious checks over a two-year period. He states that the misconduct occurred over a matter of months, not years, citing to Item 7 in support. Applicant is correct, in that Item 7 indicates that the forgery scheme took place "from late 2001 to early 2002." Despite that, there is no reason to believe that, even if he had made a finding consistent with this document, the Judge would have decided the case differently. Therefore, this error is harmless. *See* ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009).

Applicant contends that the Judge erred in concluding that he had not paid off all of his delinquent debts. He states that the fact that these debts no longer appear on his credit report corroborates his claim of payment. However, the Judge acknowledged that these debts were no longer reported, but he stated that they were not otherwise explained. He stated that Applicant did not provide evidence that he had inquired about these debts or disputed their legitimacy. Viewed in light of the evidence as a whole, and in the context of Applicant's burden of persuasion as to mitigation, the Judge's treatment of this aspect of the case is sustainable. We conclude that the Judge's material findings are based on substantial evidence, or constitute reasonable

¹*See* Item 7, Interrogatories, which contains a summary of Applicant's security clearance interview. "[Applicant] was going through a dark time in his life. He did not have a job and was living with his parents at the time. He had been out of the Army . . . [Applicant] owned a check making software program which allows people to make their own checks rather than pay their bank to provide checks. [Applicant] opened multiple checking accounts at [Bank] using fictitious names and social security numbers from late 2001 to early 2002 . . . He had fake identifications (which he made himself) for each of the accounts. He forged the signatures on each check from the various accounts . . . He did not recall how many checks from falsified checking accounts he wrote or what the total amount of the checks turned out to be before he got caught . . ." Item 7 contains a certification by Applicant that the summary is accurate.

characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See* ISCR Case No. 08-11564 at 2 (App. Bd. Jun. 21, 2010).

Applicant contends that the Judge did not consider record evidence of his current good financial condition, for example that he is in good standing on his credit cards and his automobile loan. A Judge is presumed to have considered all the evidence in the record. *See* ISCR Case 09-05830 at 2 (App. Bd. Jun. 25, 2010). Applicant's presentation on appeal is not sufficient to rebut that presumption, nor to demonstrate that the Judge weighed the evidence in an arbitrary or capricious manner.

After reviewing the record, we conclude that the Judge has cogently explained his decision, both as to the mitigating conditions and the whole-person factors. *See Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 49 (1983). The Judge's adverse 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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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