

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant has acquired new delinquent debts since his bankruptcy. Applicant deliberately omitted information from his security clearance application. Adverse decision affirmed.

CASENO: 09-05854.a1

DATE: 11/08/2010

DATE: November 8, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-05854
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 8, 2010, 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 hearing. On August 16, 2010, after the hearing, 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 mis-weighed the record evidence and whether the Judge erred in her application of the mitigating conditions. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor and a member of the Coast Guard Auxiliary. He has been divorced three times and, at the close of the record, was engaged to be married.

In 1987 Applicant filed for Chapter 7 bankruptcy protection. The bankruptcy filing showed that Applicant owed federal taxes from 1983 and state taxes from 1984.¹ Since that bankruptcy action, he has acquired delinquent debts: for example a lien for unpaid state taxes, a \$5,018 judgment against him by a creditor who had provided Applicant’s business a surety bond, and a \$7,500 debt for a surety bond from a different creditor. In addition to these debts, Applicant failed to file state income tax returns for tax years 1998, 1999, 2000, and 2001.

Applicant’s security clearance application (SCA) inquired if, (1) within the previous 7 years, he had had a tax lien; (2) within the previous 7 years he had had any unsatisfied judgments; (3) within the previous 7 years he had had any debts more than 180 days delinquent; and (4) he were currently over 90 days delinquent on any debt. Applicant answered “no” to each question, which answers were false. The Judge found that Applicant had deliberately omitted the requested information from the SCA, given the clarity of the questions and Applicant’s prior experience with security investigations.

Applicant enjoys a good reputation at his job for trustworthiness. He has demonstrated excellent duty performance and conduct.

In the Analysis portion of her decision, the Judge discussed various circumstances affecting Applicant’s debts that were out of his control, such as periods of unemployment, divorces, and expenses incurred in caring for his dying father. She also noted that he had paid off certain SOR debts. However, for the remaining SOR debts, she reasonably explained why Applicant had failed to meet his burden of persuasion as to mitigation. She stated, for example, that he had not demonstrated responsible action in regard to those debts, that he had not made good-faith efforts to repay them, and that he had not demonstrated that his financial situation was under control. Regarding the Guideline E allegations of deliberate falsification, the Judge noted that Applicant had

¹Applicant was not able to state how much of his debt was discharged through this bankruptcy action. Tr. at 71.

not attempted to correct the omissions and that he had not demonstrated that, in answering the questions as he did, he was reasonably relying upon advice from someone else.

In support of his appeal, Applicant points to decisions by the Hearing Office, which he believes support his request for a favorable determination. The Board gives due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). The cases cited by Applicant have significant factual differences from his own. Only one of the cited cases involves Guideline E falsification concerns, and in that one the mitigating evidence is more substantial than in Applicant's case. Applicant also contends that the Judge did not extend sufficient weight to record evidence of debt repayment and his good character. However, the Judge made findings concerning these matters and explicitly considered them in her decision. Applicant's disagreement with her weighing of the evidence is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). 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: Jean E. Smallin

Jean E. Smallin
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