

KEYWORD: Guideline F; Guideline E

DIGEST: The section Applicant cites from the summary of interview was a summary of Applicant's statement to the interviewer. It was not the interviewer's opinion of Applicant. Adverse decision affirmed.

CASENO: 10-09595.a1

DATE: 02/03/2012

DATE: February 3, 2012

In Re:

Applicant for Security Clearance

ISCR Case No. 10-09595

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Johnnie Louis Johnson III, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 20, 2011, 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 November 4, 2011, after the hearing, Administrative Judge Carol G. Ricciardello 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 finding that Applicant has falsified his security clearance application (SCA); whether the Judge failed properly to apply the mitigating conditions; and whether the Judge’s whole-person analysis was erroneous. Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant and his cousin purchased four pieces of real estate between 2000 and 2005. Unfortunately, he defaulted on the loans for these properties and they were sold for less than Applicant owed. The deficiencies were forgiven. However, Applicant still owes \$101,000 for a line of credit extended him by a lender. This debt was not resolved as of the close of the record. He had other lines of credit that became delinquent, though they were not alleged as Guideline F security concerns.

When Applicant completed his SCA in May 2010, he knew about his delinquent mortgages and lines of credit. However, he did not list them on the SCA, despite questions about his finances that required him to do so. His explanation was that he decided to explain his financial situation when it came up during the investigation. The Judge found that Applicant had deliberately failed to disclose his delinquent debts.

Applicant’s total monthly net income is \$5,818 and his total monthly expenses are \$3,557. He enjoys a good reputation for integrity, responsibility, and trustworthiness.

Applicant contends that the Judge erred in finding that he had deliberately omitted his delinquent debts from the SCA. However, the Judge’s decision demonstrates that she examined Applicant’s SCA answers in light of the record as a whole, taking into account his explanation for the omissions.¹ *See, e.g.*, ISCR Case No. 09-08023 at 3 (App. Bd. Sep. 6, 2011). The Judge’s finding is sustainable on this record.

Applicant contends that the Judge failed to consider all of the record evidence or that she mis-weighed the evidence. He cites to several matters in the record, particularly to the following statement taken from the interview summary: “[Applicant] could not be blackmailed or coerced regarding his finances.” Summary of Interview conducted on June 23, 2010, included in Government Exhibit 2. He argues that this represents the interviewer’s evaluation of Applicant’s trustworthiness, and the Judge either failed to consider it or did not extend it the proper weight.

¹“ . . . Your Honor, I see I made a big mistake for making that decision for not answering the question correctly. And I apologize for doing that. And in the future it’s not going to happen anymore.” Tr. at 113.

However, the statement in question is merely a summary of what Applicant had stated to the interviewer; it does not represent the interviewer's opinion of Applicant's character. Regarding the other evidentiary matters cited by Applicant, we conclude that he has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.,* ISCR Case No. 04-12742 at 2 (App. Bd. Feb. 25, 2011).

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,'" both as to the mitigating conditions and the whole-person factors. *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). *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 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