KEYWORD: Guideline F; Guideline E

DIGEST: The Judge concluded that there are no clear indications that Applicant's financial problems are under control. He also concluded that Applicant's false statements show a lack of judgment and an unwillingness to abide by rules and regulations. These conclusions are sustainable on this record. Adverse decision affirmed.

CASE NO: 11-08546.a1

DATE: 02/27/2013

DATE: February 27, 2013

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In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Christopher Graham, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 23, 2012, 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. On November 29, 2012, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 was biased against Applicant; whether the Judge erred in some of his findings of fact; whether the Judge failed to consider all of the record evidence; whether the Judge erred in his application of 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's Findings

The Judge made the following findings pertinent to the issues raised on appeal: Applicant works for a Government contractor. He has held a security clearance since 2000. There is no evidence that he has ever compromised classified information. Applicant has three grown children, one of whom he provides with financial assistance for college.

In 2000, Applicant completed a security clearance application (SCA). He did not disclose a state tax lien in this SCA, though he discussed the lien with the investigator in the subsequent clearance interview. In 2005, Applicant submitted a SCA pursuant to a periodic reinvestigation. He stated, among other things, that he had not had any liens placed against him during the previous seven years for failure to pay taxes. Applicant submitted another SCA in 2011. He denied having liens placed against him during the previous seven years for failure to pay taxes.

In fact, Applicant's state of residence had filed four tax liens against him, two in 2000 and one each in 2002 and 2008. Moreover, the IRS filed tax liens against Applicant in 2006 and 2008. Applicant owed a total of $53,000 to the IRS for tax years 2002, 2004, 2005, 2008, and 2009. Therefore, Applicant's answers about his liens in the 2005 and 2011 SCAs were not correct.[1] Applicant has satisfied his state liens, and he has established a repayment plan for the IRS liens.

Applicant owes other delinquent debts. Three of the debts alleged in the SOR pertain to real estate mortgages. Applicant is making some payments on these debts, although he sometimes does so by neglecting to pay others. Applicant also became delinquent on a car loan, and he has worked out a payment plan for it.

The Judge found that Applicant did not claim, and the evidence did not show, that circumstances beyond his control prevented him from paying his debts. He attributed his financial problems to overspending.

The Judge's Analysis

The Judge concluded that Applicant's financial problems raised security concerns under

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[1]The SOR alleged false statements in the 2005 and 2011 SCAs. It did not allege false statements in the 2000 SCA.

Guideline F. He concluded that Applicant's favorable evidence was not sufficient to warrant favorable application of any of the mitigating conditions. The Judge cited to the extent of Applicant's debts and the ongoing nature of those debts, as well as to a paucity of evidence showing that (1) circumstances outside Applicant's control affected his financial condition and (2) that Applicant took responsible action in regard to those debts. He concluded that there are no clear indications that Applicant's financial problems are under control. The Judge noted that Applicant and his wife have been employed for several years and that Applicant presented no reasonable explanation for his current financial problems.

The Judge stated that Applicant's false answers to the SCA were deliberate, thereby raising security concerns under Guideline E. He considered Applicant's evidence that his false answers had been due to honest mistakes but rejected that explanation as unreasonable. The Judge stated that Applicant's 2000 clearance interview, in which he was questioned about his liens, was sufficient to place him on notice of the Government's requirement for candor and truthfulness in the clearance process.[2] The Judge also stated that Applicant's demeanor while testifying detracted from his credibility. He concluded that Applicant's false statements show a lack of judgment and an unwillingness to abide by rules and regulations.

In the whole-person analysis, the Judge cited to evidence of Applicant's good work record and his having possessed a clearance for many years without incident. He also cited to Applicant's admirable personal qualities and to evidence of some debt repayment. However, the Judge stated that, because of Applicant's extensive experience working for Federal contractors and holding a clearance, he knew or should have known about the importance of sound financial practices and of candor during a security clearance investigation. Accordingly, he concluded that Applicant was not eligible for a clearance.

Discussion of Appeal Issues

Applicant contends that the Judge erred in his Applicant of the mitigating conditions. He argues that Applicant had established repayment plans for his debts and that he is making satisfactory progress in meeting the requirements of those plans. Therefore, he argues that Applicant had mitigated the Guideline F security concerns.

It is true that a reasonable plan for repayment can, in appropriate cases, mitigate security concerns arising from delinquent debts. *See, e.g.*, ISCR Case No. 11-03403 at 2, note 4 (App. Bd. Aug. 23, 2012). However, a Judge must examine the entirety of an applicant's circumstances in light of the security concern raised by them. Under Guideline F, the concern is that delinquent debts may indicate poor self-control, lack of judgment, and an unwillingness to abide by rules and regulations. Directive, Enclosure 2 ¶ 18. In the case before us, the Judge found that Applicant had

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[2]Government Exhibit 11, Statement of Subject, dated August 30, 2000, is Applicant's written explanation of his financial condition prepared during his 2000 clearance investigation. The statement reads in pertinent part: "The tax liens are pertaining to income taxes for [State]. Both liens are being paid through payroll deductions from my wife's payroll account. My wife had not deducted sufficient funds from her pay for taxes. This resulted in a tax lien being initiated." This document is not consistent with Applicant's contention at the hearing and on appeal that he did not know what a tax lien was.

provided no reasonable explanation for his financial problems and that he was having to alternate payments among his creditors. A reasonable person could conclude that Applicant's financial problems raise concerns about his judgment that such evidence of repayment as is contained in the record is not sufficient to mitigate. In any event, evidence that Applicant is neglecting to pay certain debts in order to pay others undercuts his contention that he has established a credible plan of debt resolution. For the most part, Applicant merely advances a different interpretation of the evidence, which is not enough to demonstrate that the Judge erred. *See, e.g.*, ISCR Case No. 11-05492 at 2 (App. Bd. Dec. 19, 2012). We find no error in the Judge's treatment of the Guideline F mitigating conditions.

In addressing Guideline E, Applicant contends that the Judge erred in finding that his falsifications were deliberate. He argues that he did not know what a tax lien was and that his answers were due to an honest mistake.

In analyzing an applicant's *mens rea*, a Judge must consider the applicant's answers in light of the record as a whole. *See, e.g.*, ISCR Case No. 10-04821 at 4 (App. Bd. May 21, 2012). Evidence of Applicant's 2000 clearance interview, which could persuade a reasonable person to believe that he understood what a tax lien was, and the Judge's evaluation of Applicant's demeanor, along with the other evidence in the record, support the challenged finding by the Judge. *See* Directive ¶ E3.1.32.1, stating that the Appeal Board gives deference to a Judge's credibility determination. The Judge's material findings of security concern under Guideline E are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 11-02311 at 3 (App. Bd. Nov. 26, 2012). To the extent that Applicant is challenging the Judge's treatment of the Guideline E mitigating conditions, we resolve this issue adversely to Applicant. The Judge's conclusion that Applicant had failed to mitigate his deliberately false statements is consistent with the record that was before him.

Applicant contends that the Judge was biased against him. The only reason cited in support of this proposition was that the Judge issued an unfavorable decision.[3] As stated above, however, the Judge's application of the mitigating conditions is supportable. Applicant points to nothing in the record that would persuade a reasonable person to believe that the Judge lacked the requisite impartiality. Applicant has failed to rebut the presumption that the Judge was impartial. *See, e.g.*, ISCR Case No. 08-03233 at 3 (App. Bd. Aug. 7, 2009)(An adverse decision, standing alone, is not sufficient to demonstrate bias).

Applicant contends that the Judge erred in his whole-person analysis. Specifically, he argues that the Judge failed to discuss each of the factors set forth in Directive, Enclosure 2 ¶ 2(a)(1). A Judge is not required to discuss each of the whole-person factors, nor does a decision turn simply on finding that one or more of them apply to the facts of a particular case. A whole-person analysis requires a Judge to consider an applicant's circumstances in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 03-21688 at 3 (App. Bd. Jul. 2, 2007); ISCR Case No. 10-03598 at 3 (App. Bd. Oct. 10, 2012). In the case under consideration here, we find no basis to conclude that the Judge's whole-person analysis was insufficient given the record before him.

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[3]"[T]he Judge's bias against Applicant is evident on the face of the decision. Failure to mitigate debts that were paid or almost paid . . . are clear evidence of bias." Appeal Brief at 10.

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). *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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, 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