

KEYWORD: Guideline F; Guideline E

DIGEST: In evaluating an Applicant's *mens rea*, we consider omissions and false statements in light of the record as a whole. Adverse decision affirmed.

CASENO: 12-03415.a1

DATE: 07/25/2014

DATE: July 25, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-03415
)	
Applicant for Security Clearance)	
)	

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 September 11, 2013, 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 Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant

requested a decision on the written record. On May 9, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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's findings of fact contained errors and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served on active duty with the U.S. military from 1979 to 1983. After that he worked for several employers before starting work for his current employer in 2007. He has held a clearance from his current employer since 2010.

Applicant has substantial delinquent debt. His debts include two judgments entered against him in favor of banks as well as various credit card and consumer debts and a debt for medical expenses. He provided no explanation for his financial problems. He hired a debt management service to negotiate on his behalf with his creditors. He began receiving collection notices from his creditors, which alerted him to the fact that his financial service was not addressing his problems. In August 2013 he sent each of his creditors a letter with a settlement offer. Some have responded, and some have not. He has failed to submit other evidence to show that he has started making payments toward his debts, such as receipts, settlement agreements, cancelled checks, or a new credit bureau report showing final payment.

In preparing his security clearance application (SCA), Applicant failed to disclose any of his charged-off debts, collection accounts, or debts delinquent more than 120 days. He claimed that, at the time he completed his SCA, he did not know his financial problems were as serious as they were. He believed that the debt management service was addressing them. He also stated that at the time he completed the SCA he had received no notices from creditors.

In November 2003, Applicant was in a serious financial crisis due to student loans and other bills. He and a fellow worker, both part-time security guards, stole a video projector from their work site for the purpose of selling it or using it as collateral for a loan. Applicant pled guilty to one count of Grand Larceny, a felony. He was sentenced to probation, community service, and restitution. He has completed all aspects of his sentence.

The Judge's Analysis

The Judge concluded that Applicant had failed to mitigate the Guideline F concerns in his case. She stated that he had not started the process of debt resolution. Noting his evidence that his debt management service may have exacerbated his problems, she nonetheless stated that Applicant has done little since then. Under Guideline E, she concluded that Applicant's omissions were deliberate. She stated that at the time he completed his SCA he knew or should have known of his

debt problems. Evidence that he had hired the debt management service demonstrates that, at the time of his SCA, he was aware of significant problems with his finances. She also noted that in 2003 Applicant had committed a felony in order to obtain funds to pay off debts. She concluded that little had changed in the years since and that the financial pressures that underlay Applicant's decision to commit the crime were still present in his life. She further concluded that Applicant had not mitigated the concerns in his case.

Discussion

Applicant takes issue with some of the Judge's findings. He denies that his omissions from the SCA were deliberate. He challenges her finding that he has worked with his current employer since 2007. He also disagrees that he owes the medical debt. We examine a Judge's findings to see if they are supported by substantial record evidence, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See also* ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012). In evaluating an applicant's *mens rea*, we consider his omissions or false statements in light of the record as a whole. *See, e.g.*, ISCR Case No. 12-12172 at 3 (App. Bd. Jan. 9, 2014).

The Judge's analysis of Applicant's omissions relied in large measure on evidence of his agreement with the debt management service. Her conclusion that this agreement demonstrates an awareness of significant debt problems is supportable. We also note her comment that Applicant had experienced financial problems for many years and had even committed a felony to raise money for debt payment in 2003, which also undermines Applicant's contention that he was unaware of the extent of his problems. Concerning the medical debt, in his Response to the SOR Applicant admitted that he owed the debt. In his Answers to Interrogatories he stated that he intended to contact the creditor. His answer on this matter did not deny the legitimacy of the debt. Item 11 at p. 12. The Judge's finding that Applicant began working for his current employer in 2007 appears to be an error. In fact, Applicant's SCA lists several employers since that year. However, there is no reason to conclude that this error affected the outcome of the case. The Judge's material findings of security concern are based upon substantial record evidence. Applicant has cited to no harmful error in the Judge's findings.

Applicant argues that his conviction occurred a long time ago and should not be considered a problem, especially in light of the fact that it was addressed in an earlier adjudication. The Government is not precluded from making an adverse decision despite prior favorable ones. *See, e.g.*, ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). This is especially true in cases such as this, in which subsequent conduct, such as Applicant's delinquent debts and deliberate omissions, raise additional concerns about his security worthiness.

Applicant contends that information in the record is outdated, undermining the Judge's conclusions about his future possible conduct. He made a similar contention in his Response to the FORM and provided some information that he believed would be of relevance in evaluating his case.

It should be noted that the Government bears no burden of production regarding allegations that have been admitted. An applicant bears the burden of persuasion as to mitigation. *See, e.g.*, ISCR Case No. 11-04088 at 3 (App. Bd. Jan. 29, 2013). Directive ¶ E3.1.15. If Applicant possessed additional evidence that would have illuminated the current state of his finances beyond what was reflected in his admissions to the SOR and in other documents, it was his task to provide it.

He has cited to evidence that he believes favorable to him, such as his plan to address his current debts before resolving his delinquent ones. To the extent that he is arguing that the Judge did not consider this evidence or that she mis-weighed it, he has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-12172 at 3, *supra*.

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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