

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s findings, including that Applicant had deliberately falsified his application, were based upon substantial record evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence. We give deference to a Judge’s credibility determination. Hearing Office cases are not binding on other Hearing Office Judge or on the Appeal Board. Adverse decision affirmed.

CASE NO: 14-01607.a1

DATE: 04/09/2015

DATE: April 9, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-01607
)	
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 June 20, 2014, 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 December 31, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 is 45 years old. He received an undergraduate degree in 1992 and an advanced degree in 1999. His wife has a daughter who lives with them, and Applicant has two children from a previous marriage. This is Applicant's first effort to obtain a security clearance.

Applicant has several delinquent debts, for such things as communication services, medical expenses, and student loans. He has recently paid several accounts. He experienced two months of unemployment in the past and has had to pay child support, which reduced his disposable income. He estimated that his student loans total about \$140,000, including interest. Applicant stated that he neglected to pay his student loans due to other financial obligations. He acknowledged that, regarding the loans, "he got busy and put it on the back burner." Decision at 3. He also admits that he has not been diligent about monitoring his credit.

Applicant first obtained student loans in 1993. At some point prior to 2011, the Department of Education (DoED) started proceedings to garnish his wages. Applicant believed that the amounts that the DoED was seeking to recover were not accurate. There is nothing in the record to show any financial counseling. Applicant has credit cards that are "almost maxed out." *Id.* at 3. He pays about \$25 on them a month. He also stated that he borrows money each month from his parents because he has a negative monthly remainder. Applicant's wife has just taken a part-time job. His annual salary is \$115,000. The Judge noted Applicant's contention that some of his debts were no longer listed in his credit reports.

Applicant enjoys a good reputation for the quality of his work performance. A witness, who has known Applicant for two years, finds him to be reliable. Another witness, a personal friend, regards him as reliable and trustworthy. Applicant's wife testified that he handles the financial matters for the family. She did not know about the reason for the security clearance hearing.

In completing his security clearance application (SCA), Applicant answered "no" to two questions: (1) whether, within the previous seven years, any of his debts had been turned over to collection agencies and (2) whether he was currently over 120 days delinquent on any debt. These answers were untrue. The Judge quoted Applicant's comment at the end of his SCA about his finances: "all *valid* (emphasis added) current loans and financial obligations are being paid. There are past financial obligations that are no longer delinquent because they are either disputed, closed, [charged-off], or unreported (but none of these obligations are current delinquencies.*)" Decision at 4. The Judge stated that she found Applicant's explanation to be lacking in credibility. She found that he knew about the status of his student loans because the DoED had been seeking wage garnishment and Applicant had requested a hearing before that agency. She noted Applicant's citation to various ethical principles associated with his profession and to his character evidence. He

argued that this evidence demonstrated his honesty. However, she concluded that, given Applicant's level of education and experience, he was not being candid when he answered the questions as he did.

The Judge's Analysis

The Judge reiterated her conclusions about Applicant's lack of candor. She found his explanations to be "disingenuous," stating that they did not convince her that Applicant is reliable or trustworthy. Decision at 6. She also noted evidence that Applicant's student loans remained unpaid until 2013, precluding a conclusion that they occurred so long ago that they no longer cast doubt upon Applicant's trustworthiness. She stated that he had not acted responsibly in regard to his debts and that he is currently paying his student loans under threat of garnishment. In the whole person analysis, the Judge noted evidence that Applicant had paid some of his debts. She cited to his level of education, his professional responsibilities, and his evidence of good job performance. However, she stated that Applicant had not mitigated the concerns in his case.

Discussion

Applicant challenges some of the Judge's findings of fact. He denies that he deliberately falsified his SCA. He also claims that the Judge erred in finding that he still owed several of his debts, insofar as some of them no longer appear on his credit reports. We examine a Judge's findings of fact to see if they are supported by "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. In evaluating 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. 13-00142 at 3 (App. Bd. Oct. 15, 2014).

Concerning the deliberate nature of Applicant's SCA response, we note the Judge's reliance on Applicant's maturity, education, and professional experience, which made it unlikely that he actually believed that charged-off or unreported debts were no longer owed or that a basis to dispute the amount of a debt rendered the obligation itself invalid. Her analysis of this issue focused in large measure upon the student loans. Given Applicant's admission that he had neglected these loans, his testimony that he should have answered the questions differently (Tr. at 39), and his 2011 request that the DoED provide a hearing regarding the debt, the record supports a conclusion that Applicant could not reasonably have believed that he was providing full, frank, and truthful answers when completing his SCA.¹ *See, e.g.*, ISCR Case No. 08-01075 at 6 (App. Bd. Jul. 26, 2011). Moreover, concerning Guideline F, evidence that debts are no longer contained in credit reports is not a reason

¹*See* Directive, Enclosure 2 ¶ 15: "Conduct involving . . . lack of candor . . . can raise questions about an individual's reliability, trustworthiness and ability to protect classified information . . . The following will normally result in an unfavorable clearance action . . . refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security . . . determination."

for finding that they have been resolved, as Applicant asserted in his brief. *See, e.g.*, ISCR Case No. 98-0111 at 3 (App. Bd. Nov. 13, 1998). The Judge's material findings of security concern are supported by substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Applicant has not cited to any harmful error in the Judge's findings of fact.

Applicant's citation to his favorable evidence, such as his character witnesses and his efforts at debt resolution, are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No.13-00828 at 4 (App. Bd. Feb. 26, 2015). 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. 14-01509 at 2 (App. Bd. Jan. 29, 2015). Despite Applicant's argument to the contrary, the record as a whole supports the Judge's conclusion that his presentation lacked credibility. We give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Applicant has cited to other Appeal Board cases which, he contends, support his effort to obtain a clearance. Those cases are distinguishable on their facts from the case at issue. For example, Applicant cites to the Board decision in ISCR Case No. 02-28917 (App. Bd. June. 10, 2005). In that case the applicant admitted the indebtedness but was unsure of specifics. In the case before us, Applicant's answers to the SCA constituted denials of indebtedness.

The Judge has articulated a satisfactory explanation for her decision. Unsatisfied debts are a continuing course of conduct for the purpose of DOHA adjudications. *See, e.g.*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). A Judge may consider not only the extent to which debts have been paid but the circumstances underlying them as well. *See, e.g.*, ISCR Case No. 11-00046 at 3 (App. Bd. Feb. 10, 2012). *See also* Directive, Enclosure 2 ¶ 15, *supra*, at note 1. 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