

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge’s findings of fact are supported by substantial evidence. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Applicant has not demonstrated that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 14-03944.a1

DATE: 06/09/2016

DATE: June 9, 2016

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In Re:)	
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-----)	ISCR Case No. 14-03944
)	
Applicant for Security Clearance)	
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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 January 22, 2015, 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 March 31, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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's SOR allegations arose from a series of business activities that he engaged in over the years. In summary, the Judge found that Applicant began a company that provided support to the U.S. military. Applicant was offered a job working for a Government agency, so he sold the business to the minority shareholders. However, the new management did not perform well, and the company experienced significant financial problems. Applicant bought the business back, and he has undertaken to pay down debt and resolve the company's problems with state taxing authorities and with the IRS. These agencies placed liens against Applicant, including one for \$800,000 that was placed against his home. He also owed personal taxes to his state. The Judge found that Applicant had employed an attorney to assist with these problems and that he had entered into payment agreements.

Applicant engaged in other business activities, including working for another employer to earn income while he was acquiring his former company. In this capacity, he met with persons in an African country. Applicant spoke with a "rebel leader" of that country about arms sales. Applicant stated that he was willing to provide weapons, contingent on obtaining a licence to do so and a contract for shipping. However, no further action was taken on this matter. In addition, Applicant withdrew about \$6,800 of company funds to pay a personal debt. He did not have permission from the company to do so. Applicant's employer told him that she was going to fire him, but Applicant resigned instead. Applicant claimed that he resigned because his employer was a racist who did not want to do business with Africans. He provided no corroboration for this assertion. When completing his security clearance application (SCA), Applicant did not disclose his employment with this company.

Applicant had other financial problems that resulted in lawsuits. The Judge entered favorable findings regarding three SOR allegations regarding litigation against Applicant. In one of them, Applicant was sued for over a million dollars but settled for under \$100,000. The other two pertained to loans he had acquired in his effort to repurchase his former company.

Applicant enjoys an excellent reputation for the quality of his work and for his effort to restore his company's financial health. He also submitted laudatory written statements from business associates, friends, his facility security officer, and his domestic partner.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under both Guidelines. Among other things, the Judge found that Applicant's omission of his employment from the SCA was deliberate. Concerning mitigation, the Judge noted evidence that Applicant was paying his tax

debts. However, he characterized Applicant's testimony about his finances as "imprecise and confusing." Decision at 8. He also stated that Applicant provided no evidence as to the exact amounts he owed or the current status of the debts. He stated that Applicant's case consisted more of promises to pay debts in the future than of a track record of debt resolution. He also concluded that Applicant did not mitigate his having taken funds from his employer without permission.

Applicant's financial problems were cross-alleged under Guideline E. The Judge found that they impugn his reliability and trustworthiness. In addition, he concluded that the other Guideline E allegations, such as his having met with the rebel leader, having resigned from employment in lieu of termination, and his deliberate SCA falsification, were not mitigated.

Discussion

Applicant challenges some of the Judge's findings of fact. For example, he argues that his omission from the SCA was an honest mistake, that there is no evidence of a tax lien against his home, that he had authority to withdraw funds from his employer, and that he did not engage in arms sales talks with a foreign rebel, etc. We examine a Judge's findings 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.

For the most part, the Judge's findings are based upon Applicant's own statements, whether in his clearance interview, his Answer to the SOR, and/or his testimony at the hearing.¹ Concerning the SCA omission, the Judge noted that Applicant had disclosed all of his other employment positions, leaving out only the job which he had left under adverse circumstances. It was reasonable for the Judge to conclude that Applicant had intentionally left out information that he found embarrassing or that might be viewed unfavorably. The Judge's material findings are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

¹Applicant testified that the IRS had placed a lien against his home in the amount of about \$800,000 for taxes owed by his company. Tr. at 107. He made a similar statement in his Answer to the SOR. To the extent that his appeal argument means that there is no independent evidence of his lien, we note that the Government has no duty to provide evidence regarding allegations that an applicant has admitted. Directive ¶ E3.1.14. He told his clearance investigator that he met with a rebel commander at a hotel "to discuss firearms acquisition." Applicant advised the commander that, if the commander could get a contract, Applicant "was willing to provide these weapons." The commander gave Applicant photographs of the weapons that he wanted, and Applicant kept them in his desk at work. Summary of Clearance Interview, September 5, 2013, at p. 3, included in Government Exhibit (GE) 2, Answers to Interrogatories. Applicant certified that GE 2 accurately reflected the interview, although he stated that "nothing substantial came of the pursuits" with the foreign persons except for the construction of a small schoolhouse. Applicant did not object to the admission of GE 2. Tr. at 38. He testified that he never promised to provide weapons. Tr. at 82. The evidence as a whole supports the challenged findings about Applicant's interactions with the foreign persons. Concerning the \$6,800 fund withdrawal, Applicant told the interviewer that he had been desperate and that the company would have denied him the funds if he had asked for them. His rationale for taking the money was that he was the reason that the company had the funds to begin with. Interview Summary, *supra*, at p. 3.

Applicant cites to evidence, such as his testimony and the letter from his attorney that he was resolving his tax liabilities, the circumstances underlying his resignation from the company, etc. He also cites to his military service and to his having held a clearance for many years without incident. The Judge made detailed findings about Applicant's circumstances, including most of the matters that he addresses on appeal. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016).

Applicant challenges the manner in which the Judge weighed the evidence, arguing that he did not extend enough weight to evidence that was favorable to Applicant. In fact, the Judge acknowledged that Applicant's testimony presented his circumstances in a favorable light, and he concluded that Applicant was, to a certain extent, addressing his financial problems. However, the Judge's characterization of Applicant's explanations as "confusing" is supportable, as is his conclusion that Applicant had presented insufficient evidence of the true extent of his tax debts or of the extent to which they were being paid. Moreover, the Judge's treatment of the Guideline E allegations, especially the deliberate omission from the SCA and the discussions with the foreign official, are consistent with the record that was before him. Applicant's exculpatory statements appear to have been made after the SOR placed him on notice that his clearance was in jeopardy. We find no reason to question the manner in which the Judge weighed the evidence. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).²

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."

²At the beginning of his brief, Applicant argues that his financial problems do not raise security concerns. Given the extent of Applicant's debts, including his tax liabilities, the Judge's conclusion that the case raised concerns under Guideline F is supportable. *See* Directive, Enclosure 2 ¶ 18 to the effect that financial circumstances can raise questions about an applicant's reliability and ability to protect classified information. Applicant did not make a similar argument about the Guideline E allegations.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Member, Appeal Board