

KEYWORD: Guideline F; Guideline J; Guideline E

DIGEST: A Judge should evaluate an applicant's *mens rea* in light of the record as a whole. We give deference to a Judge's credibility determinations. A Judge is presumed to have considered all of the evidence in the record. We are not permitted to consider the impact of an unfavorable decision. Adverse decision affirmed.

CASE NO: 15-01689.a1

DATE: 12/08/2016

DATE: December 8, 2016

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| In Re:) | |
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| -----) | ISCR Case No. 15-01689 |
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| 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 September 25, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 14, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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's findings 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 working on a bachelor's degree. Married and divorced twice, he has joint custody of his two minor children, who live with him. In addition, he pays child support for another minor child from a previous relationship. Applicant's military service from 1987 until 2009 included three combat tours.

Applicant has experienced financial difficulties that he attributed to a reduction in pay following his retirement from the military and to frequent moves while seeking employment. The Judge entered adverse findings regarding three debts, in the amounts of over \$22,500 (repossessed vehicle), over \$16,000 (repossessed vehicle), and over \$3,400 (charged-off personal loan). The Judge found that Applicant did not corroborate his claims to have disputed the first two debts and that none of the three had been resolved.

Applicant's security clearance application (SCA) inquired about the following: (1) property voluntarily or involuntarily repossessed; (2) defaults on any types of loans; (3) debts turned over to a collection agency; (4) accounts or credit cards suspended, charged-off, or cancelled for failure to pay; (5) debts more than 120 days delinquent; and (6) debts currently more than 120 days delinquent. Applicant answered "no" to these questions. These answers were false in light of the debts referenced above.¹ She found that he did not intentionally falsify his responses about collection accounts. However, she found that his other false answers were deliberate.

In 1999, while in the military, Applicant was punished under Article 15, UCMJ, for submitting a fraudulent travel claim. That same year he was also charged with driving under a suspended license, criminal trespass, and aggravated assault and aggravated stalking. The felony offenses were *nolle prossed*. In 2007, Applicant was charged with burglary, assault, domestic violence, and wanton endangerment, resulting from an altercation with his estranged wife. He pled guilty to the last charge and received two years of probation, which he has completed.

The Judge's Analysis

The Judge stated that Applicant had known about the three debts described above since 2009 but had not resolved them. She stated that he was relying on the fact that two of them no longer appear on his credit reports. She noted circumstances beyond Applicant's control that affected his debt problems but concluded that he had not acted responsibly under the circumstances. She also noted that Applicant had not received financial counseling or shown that his problems are being resolved. She concluded that he had not mitigated the concerns arising from his delinquent debts.

¹The SOR alleged only that Applicant had failed to disclose that the three debts identified above had been turned over to collection. It did not allege the other omissions regarding these debts.

The Judge entered favorable findings regarding allegations that Applicant had deliberately failed to disclose his felony offense and that he had failed to disclose that the three debts had been turned over to collection. She stated that there is no evidence that Applicant was aware that one of his debts was a collection account. However, she entered adverse findings regarding the criminal offenses, which were cross-alleged under Guidelines J and E. In concluding that Applicant had failed to mitigate these offenses, she cited to her finding of deliberate falsifications on his SCA. Despite the age of his most recent criminal offense, the Judge stated that his omissions showed a pattern of dishonesty.

Discussion

Applicant challenges the Judge's finding that he had deliberately falsified his SCA. When evaluating the deliberate nature of an applicant's omissions or false statements, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

The challenged finding relied in large part upon the Judge's conclusion that Applicant's explanations for his omissions were not credible. We give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. During his clearance interview, Applicant stated that he did not think that he had to list one of the debts because he had already discussed it with his bank. He also stated that he did not think that he had to list another debt because the collateral, a vehicle, had been repossessed. Government Exhibit 2, Interview Summary, at 7-8. It was reasonable for the Judge to have found these explanations to be lacking in credibility. We note that the questions at issue were clearly worded in the SCA, making it less likely that a person pursuing a college degree would misinterpret them. The challenged finding is sustainable.

Applicant cites to record evidence that he believes supports his effort for a favorable determination. This evidence includes his having held a clearance for many years without incident or concern, the length of time since his last criminal incident, his attendance at anger management classes, etc. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence, nor is it sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-05795 at 2-3 (App. Bd. Apr. 26, 2016).

Applicant states that his job requires that he possess a security clearance. The Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-02619 at 3 (App. Bd. Apr. 7, 2016).

The Judge examined the relevant evidence 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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board