

KEYWORD: Guideline F; Guideline E

DIGEST: The Board concludes the Judge’s finding that Applicant deliberately failed to disclose debts on her security clearance application reflects a reasonable interpretation of the record evidence and is sustainable. Adverse decision affirmed.

CASE NO: 15-01724

DATE: 12/16/2016

DATE: December 16, 2016

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 15-01724

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Gary C. Llewellyn, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 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) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 23, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 erred in his findings and

whether the Judge's decision was arbitrary, capricious, or contrary to law. The Judge found in favor of Applicant on the Guideline F allegations and two allegations under Guideline E. The favorable findings were not raised as an issue on appeal. He found against her on one allegation under Guideline E. Consistent with the following, we affirm the Judge's unfavorable clearance decision.

The Judge's Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. She has worked for her current employer since May 2012. She is married and has two adult children.

Applicant had financial problems which she attributed to her husband's employment issues beginning in 2009, and her two children entering college in 2008 and 2009. Applicant has an unpaid judgment and seven delinquent debts. In her Answer to the SOR, Applicant admitted owing most of the alleged debts. She stated that she would borrow from her mother to pay the debts. Applicant subsequently borrowed from her mother and paid or settled four of the remaining eight debts. Applicant has a plan for paying the remaining debts.

In July 2012 Applicant completed a security clearance application (SCA). She answered "No" to the questions in Section 26 pertaining to her delinquent debts and the judgment entered against her.

The Judge's Analysis

The Judge found that Applicant mitigated the government's concerns under Guideline F. The Judge found against Applicant on the allegation under Guideline E that she intentionally falsified the questions concerning her delinquent debts. He noted that excluding the judgment, Applicant's other debts became delinquent within the seven-year period referred to in the questions on the SCA. Applicant was aware of her delinquent debts at the time she filled out her SCA and intentionally falsified material facts when she failed to disclose them.

Discussion

In her appeal brief, Applicant cites to the Intelligence Community Policy Guidance Number 704.2 (October 2, 2008). Preliminarily, this document has no direct relevance to Applicant's case; it governs Sensitive Compartmented Information (SCI) eligibility. However, we recognize that the adjudicative guidelines for SCI are virtually identical to the security clearance guidelines for cases involving Guideline F and Guideline E, and will interpret Applicant's arguments accordingly.

Applicant contends that she did not deliberately falsify her SCA by failing to disclose unfavorable information of security concern in response to the financial questions. She argues that her Facility Security Officer (FSO) was not competently performing her duties, that she had no help filling out her SCA, and the FSO did not review her answers to it before submission. She states that if her FSO had reviewed her SCA, these omissions would have been resolved. She states that the FSO has since been terminated.

The record contains sufficient evidence for the Judge to have concluded that Applicant was

aware of the delinquent debts in the SOR when she submitted her SCA. In this regard, in her Answer to the SOR, Applicant admitted that her financial problems were attributable to her husband's employment status in 2009, and paying for her children's college in 2008 and 2009. She stated that without her husband's consistent income, their bills fell further and further behind and she had no way of satisfying them. She stated that she had to put most of the credit cards and outstanding bills in her name making it difficult to keep them paid up-to-date. Credit reports confirm the delinquent accounts, which occurred within the seven-year reporting requirement of the SCA questions. The Judge considered Applicant's explanation that the FSO did not go over the SCA with her or explain the sensitivity of the whole process. The Judge considered the record evidence in light of his assessment of Applicant's credibility. The Judge noted that during her background investigation when Applicant discussed her finances, she stated that her delinquent debts occurred because of her need to pay her mortgage and support her children rather than paying her debts. The Board concludes the Judge's finding that Applicant deliberately failed to disclose debts on her SCA reflects a reasonable interpretation of the record evidence and is sustainable. *See, e.g.,* ISCR Case No. 06-24669 at 2 (App. Bd. March 14, 2008).

Applicant challenges the Judge's consideration of her conduct while employed by a school five years ago and states that since the Judge found for her under Guideline F and for her on two of the allegations under Guideline E, he should not have used these findings against her when evaluating her case under the whole-person analysis. She states that the incident at the school occurred five years ago and since then, her behavior and employment have been exemplary. We find no indication that the Judge relied on the conduct that he otherwise found to be mitigated or not proven.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Member, Appeal Board