

KEYWORD: Guideline F; Guideline E

DIGEST: To the extent that Applicant is arguing that he did not deliberately provide false statements during the processing of his security clearance application, we conclude that the Judge’s finding of deliberate conduct is sustainable. Adverse decision affirmed.

CASE NO: 15-04856.a1

DATE: 03/09/2017

DATE: March 9, 2017

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In Re:)	
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)	ISCR Case No. 15-04856
)	
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 January 12, 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 January 31, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 in the military from 1986 until 2008, at which time he retired. He has earned an associate's degree. Applicant has worked full time for a DoD contractor since 2011. He has experienced unemployment due to job layoffs, and he attended college after leaving the military, living off of his retirement pay and the G.I. Bill. Applicant's SOR lists several delinquent debts, for such things as a collection account in the amount of nearly \$20,000, a child support arrearage, and a debt owed to a gym. He stated that his child support came out of his retired pay monthly, although his child support obligation is calculated on a weekly basis, resulting in him being in arrears from time to time. The Judge found that an additional SOR debt, a delinquent credit card account, had been resolved.

Applicant was charged with DUI/DWI in 1985, 1998, and 2003. When he completed a security clearance application (SCA) in 2002, Applicant did not disclose his 1985 and 1998 DUIs. When questioned by an investigator during his clearance interview in late 2003, Applicant disclosed the latest arrest but denied any other "negative contact" with law enforcement. Decision at 4. During a later interview, he stated that he had failed to disclose the 1998 arrest because it had resulted in probation before judgment. When asked about the truthfulness of his 2002 SCA answers, he stated that he was not "totally honest." *Id.* at 5. However, he stated that he had not intentionally omitted his criminal charges. He admitted that he was afraid that his misconduct would affect his career and that he was embarrassed by his infractions. Applicant admitted the misconduct in his most recent SCA. However, in his Answer to the SOR and FORM response he denied intentional falsification during 2002 and 2003. He stated that he believed he did not have to disclose the 1985 incident because he had already done so prior to joining the military. He reiterated his contention that he omitted the 1998 incident because it had resulted in probation before judgment. He provided no explanation for his denial of other alcohol incidents during the 2003 interview.

The Judge's Analysis

The Judge concluded that Applicant's financial problems, notably his child support arrearage, may well recur. He also concluded that Applicant has not demonstrated responsible action in regard to his debts. Applicant has been gainfully employed for several years but has taken no steps to resolve his large collection account, nor is there evidence of financial counseling or clear indications that Applicant's problems are under control. Concerning the falsifications alleged under Guideline E, the Judge found that they were deliberate. He stated that Applicant's various explanations were inconsistent and not supported by the record, and he reiterated his finding that Applicant had provided no clear explanation for his 2003 interview in which he denied any alcohol-related offenses other than the most recent one. The Judge concluded that Applicant had yet to acknowledge his misconduct, precluding a finding that he had demonstrated rehabilitation.

Discussion

Applicant's brief includes matters from outside the record, which we cannot consider.

Directive ¶ E3.1.29. His arguments regarding his financial delinquencies are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02040 at 2 at 3 (App. Bd. Feb. 14, 2017). Neither are they enough 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. 15-08842 at 3 (App. Bd. February 14, 2017).

Applicant apologizes for “the appearance of being untrustworthy in the past with my responses to security clearance questions.” Appeal Brief at 3. To the extent that he is arguing that he did not deliberately provide false statements during the processing of his 2002 SCA, we conclude that the Judge’s finding of deliberate conduct is sustainable. We note the relative age of Applicant’s false statements. However, given the Judge’s finding that Applicant has failed to provide credible explanations for them, his adverse decision under Guideline E is consistent with the record that was before him.

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 Ra’anan

Michael 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

