

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant contends the amount of the delinquent debt was too small to create security concerns when he has consistently met other financial obligations. We note the amount of the Federal tax lien was over \$14,000. Nothing in Guideline F indicates there must be any particular threshold amount of delinquent or unresolved debts to raise security concerns.

CASENO: 15-08676.a1

DATE: 04/28/2017

DATE: April 28, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-08676
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Richard L. Morris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 2, 2016, 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 February 17, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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, who is 47 years old, served on active duty for about seven years and received a general discharge under honorable conditions due to a pattern of misconduct. During discharge processing, he acknowledged he was ineligible to reenlist. He had attained the grade of E-5, but left military service as an E-2. His misconduct included alcohol-related driving offenses.

When Applicant submitted a security clearance application (SCA) in 2015, he stated that he received an honorable discharge. He denied intentionally falsifying his SCA. He testified that he was distracted by another worker when answering the question about the characterization of his military discharge. He does not recall seeing "general under honorable conditions" in the drop-down menu for the types of discharges and thought a general discharge was the same as an honorable.

The SOR alleges 13 delinquent debts, including child-support arrearage, a Federal tax lien, and three state tax liens. Applicant testified that he works at sea for periods of four or five months at a time. While at sea, his pay is deposited in a joint bank account, and he counts on his wife to pay the bills. The SOR was an "eye opener" because he was unaware of the derogatory information in his credit reports. He earned about \$105,000 in 2015.

Applicant is making regular payments on the child support arrearage. For five debts, including two state tax liens and a Federal tax lien, Applicant provided no documentary evidence of either payments or payment agreements. Two of the alleged state tax liens are duplicate debts. Applicant denied other debts that have been removed from his credit report.

The Judge's Analysis

Applicant's debts are numerous, recent, and were not incurred under circumstance making them unlikely to recur. He encountered several conditions beyond his control, including his wife opening accounts without his knowledge. He acted responsibly in handling the child support arrearage, but not regarding other debts. He made no effort to monitor his finances or determine his financial situation until he received the SOR. He appears to have made payment agreements for two debts, but submitted no evidence of any payments. He took no meaningful action to resolve the tax lien until after the hearing. He continues to trust his wife to manage the family finances without any meaningful involvement. The Judge found in favor of Applicant on the child support arrearage, one duplicate debt, and the denied debts removed from his credit report. While Applicant has taken some steps to resolve the other debts, he had done too little too late.

When Applicant submitted his SCA, he was a responsible adult and knew his military service was terminated because of his misconduct. The Judge found Applicant's explanation that his discharge was the equivalent of an honorable discharge implausible and unpersuasive. His falsification was not minor and did not happen under unique circumstances.

Discussion

Applicant asserts the Judge's conclusion that Applicant made no effort to correct his falsification was contrary to the record evidence. Appeal Brief at 11. However, he does not identify the record evidence that contradicts the Judge's conclusion. This assertion of error fails for lack of specificity. *See, e.g.*, ISCR Case No. ISCR Case No. 14-05920 at 3 (App. Bd. Jan. 8, 2016).

Applicant also essentially contends the amount of the delinquent debt was too small to create security concerns when he has consistently met other financial obligations. In this regard, we note the amount of the Federal tax lien was over \$14,000. Nothing in Guideline F indicates there must be any particular threshold amount of delinquent or otherwise unresolved debts that must be reached before an applicant's financial difficulties raise security concerns. The Judge must consider the record as a whole in reaching a common sense conclusion about whether the evidence raises such concerns. *See, e.g.*, ISCR Case No. 02-10168 at 4 (App. Bd. Aug. 1, 2003). Based on our review of the record, we find no error in the Judge's conclusion that some of Applicant's debts raised security concerns under Guideline F.

Applicant further contends that the Judge did not consider all of the evidence. For example, he argues that he provided a reasonable explanation for not knowing of the delinquent debts until he received the SOR and that he mistakenly believed his military discharge was honorable. The Judge made findings about many of the matters that Applicant has cited and addressed them in his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016).

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. The presence of some mitigating evidence does not compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A parties disagreement with the Judge's weighing of the evidence, or the ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No 15-00650 at 2 (App. Bd. Jun. 27, 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 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