

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant contends that the Judge did not consider all of the evidence. However, a Judge is presumed to have considered all of the evidence in the record, and Applicant’s brief is not sufficient to rebut that presumption. Adverse decision affirmed.

CASENO: 16-00076.a1

DATE: 10/20/2017

DATE: October 20, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 16-00076
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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 May 2, 2017, 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 September 6, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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 was employed by a Defense contractor from July 2016 to July 2017, and for the Government and Government contractors in prior years. Since 2010, he has experienced periods of unemployment off and on for a total of about 17 months, with a result that he suffered financial hardships. Applicant's delinquent debts include consumer credit accounts and medical costs. Applicant provided no documentary evidence to show that these debts have been resolved or disputed. One of them became delinquent in 2008 and was charged off in 2012. Applicant has no savings and about \$400 in a checking account. After the hearing, his employer let him go, and he has been out of work ever since. He was previously fired because of a dispute over his work schedule and his use of personal leave. He has provided no documentary evidence of financial counseling or other professional assistance.

Applicant failed to list his delinquent financial accounts on his 2012 and 2016 security clearance applications (SCAs). He claimed that his omissions were due to oversight and also that his accounts were on his credit reports and would therefore have been discovered by the Government. He also stated that he was "not thinking" when he completed the SCAs. He has previously completed about six SCAs and has listed his financial problems in doing so. He also failed to list civil court actions against him, contending that he thought he only needed to list active lawsuits, not those that were settled.

### **The Judge's Analysis**

The Judge cleared Applicant for some of the SOR debts and some of the alleged false statements. However, for those described above, he entered adverse findings. The Judge stated that Applicant did not present evidence to show that he was addressing his debts and that Applicant's claim to have about \$400 after expenses each month is not credible. The Judge stated that Applicant's financial problems do not appear to be under control. He stated that there is not enough evidence of responsible action in regard to Applicant's debts to establish mitigation.

The Judge found that the omissions described above were deliberate. He cited to Applicant's long history of completing SCAs and to Applicant's acknowledgment that he should have disclosed his debts and court actions. He concluded that none of the mitigating conditions fully applied to these deliberate omissions.

### **Discussion**

Applicant's arguments include challenges to the Judge's treatment of a mortgage account and to some student loans. However, the Judge entered favorable findings regarding these debts. Therefore, any error he committed was harmless. Applicant contends that the Judge did not consider all of the evidence. However, a Judge is presumed to have considered all of the evidence in the record, and Applicant's brief is not sufficient to rebut that presumption. *See, e.g.*, ISCR Case No. 15-08711 at 3 (App. Bd. Aug. 24, 2017). Applicant cites to his job loss, noting that without a clearance he will not be able to secure future employment. The Directive does not permit us to

consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017). Applicant contends that he has satisfied the mitigating conditions, but an ability to argue for a different interpretation of the evidence is not 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. 15-08711, *supra*. In particular, the Judge’s findings and analysis of Applicant’s omissions from his SCAs is sustainable.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Refusal to provide truthful answers during the security clearance process “will normally result in an unfavorable . . . security clearance action[.]” Directive, Encl. 2, App. A ¶ 15(b). *See also* ISCR Case No. 15-08255 at 3 (App. Bd. Aug. 22, 2017). 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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