

KEYWORD: Guideline B; Guideline F; Guideline E

DIGEST: The Appeal Board cannot consider new evidence. Disagreement with a Judge's weighing 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. Adverse decision affirmed.

CASE NO: 15-00063.a1

DATE: 02/27/2017

DATE: February 27, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-00063
)	
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 September 21, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). After Applicant answered the SOR, Department Counsel withdrew the Guideline B allegations. Applicant requested a decision on the written record. On October 27, 2016, after considering the record, 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 is a 60-year-old employee of a Federal contractor. He has worked for Federal contractors since 2003. He married in 1979 and divorced in 2003. He married his current wife in 2009 and has no children. He received an associate's degree in 2005. In discussing Applicant's SOR answer, the Judge stated:

Applicant's answer to the SOR is ambiguous. Regarding the Guideline F allegations, [Applicant] stated,

I was not aware of these delinquencies. I plead guilty. . . . Two months ago I was interviewed by [a security officer]. I asked [the security officer] to check my credit report and he said it was fine with a score of 650. Recently I checked my credit report and it is as you say. I do not understand it and am looking into it. I paid them all off.

Regarding the Guideline E allegation, he stated, "Guilty, as stated above." I have interpreted his answer to say that he paid the debts and was not aware that they were listed in his CBRs [credit bureau reports] as delinquent. I have treated his answers to the SOR as denials. Decision at 2.

The SOR alleges three credit card debts that were referred for collection in total amount of about \$27,000 in June 2012. These debts are reflected on Applicant's credit reports of April 2013 and June 2015. Two of these accounts reflect that the last payment on them was made in 2014. The third account reflects that Applicant was an authorized user of the credit card.

When Applicant submitted his security clearance application (SCA) in March 2013, he answered "no" to questions that asked whether, during the past seven years, he defaulted on any type of loan or had bills or debts turned over to a collection agency, and whether he was currently 120 days delinquent on any debt. He did not disclose in the SCA the debts alleged in the SOR. In his response to the SOR, he did not submit any documentation that the debts have been paid, compromised, forgiven, disputed, or otherwise resolved. He did not submit a response to Department Counsel's File of Relevant Material (FORM).

The Judge's Analysis

Applicant is not legally responsible for the credit card debt in which he was listed as an authorized user. This alleged debt was not established by the evidence. The Judge found for Applicant on that debt.

Applicant's admissions and his credit report establish the other two credit card debts. These debts are recent, but arguably infrequent. Applicant provided no information about the circumstances in which the debts were incurred and submitted no evidence showing the debts were paid or otherwise resolved. He has not disputed any of the alleged debts.

Applicant's experience and level of education are relevant in determining whether a failure to disclose relevant information on a SCA was deliberate. Applicant made payments on two credit cards after submitting his SCA, which contradict his claim that he thought the debts were paid when he submitted that document. The amount of the debts, the lengthy period during which the debts were unresolved, and his implausible and unconvincing explanation for not disclosing them in his SCA indicate an intentional falsification. His falsification was recent, not minor, and did not happen under unique circumstances.

Discussion

In his appeal brief, Applicant argues that the debts were incurred without his knowledge. Specifically, he stated his ex-wife incurred them after their divorce. He also claimed that he provided this information to a security officer (who is not the one that he discussed in his SOR answer). Such information was not previously presented to the Judge and, therefore, constitutes new evidence that the Appeal Board can neither receive nor consider. Directive ¶ E3.1.29.

Applicant also presents arguments concerning the Guideline B allegations. Since the Guideline B allegations were withdrawn, we need not address his arguments regarding those allegations. The remainder of his appeal brief amounts to a disagreement with the Judge's weighing of the evidence, which is not 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. 14-06634 at 2 (App. Bd. Apr. 28, 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 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