

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. In evaluating whether an applicant’s false statements are intentional, a Judge should consider them in light of the entirety of the record evidence. The Judge’s whole-person analysis complies with the requirements of the Directive in that he considered Applicant’s security-significant conduct in light of the record as a whole. We are not permitted to consider the impact of an unfavorable decision. We have no authority to grant an interim, conditional, or probationary clearance. Adverse decision affirmed.

CASE NO: 15-06532.a1

DATE: 2/16/2017

DATE: February 16, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-06532
)	
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 May 1, 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 November 30, 2016, after the hearing, Defense

Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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's treatment of the pertinent mitigating conditions was erroneous and 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 retired from the U.S. military and is currently employed by a Defense contractor. His SOR lists several delinquent debts, which he attributed to his second wife. He claimed that she misled him about their debts and the extent to which she was paying them. Applicant's ex-wife signed a statement to that effect as well. Applicant Exhibit (AE) B.

Applicant was discharged in Chapter 7 bankruptcy in 2001. He had filed for relief in order to avoid sole liability for debts incurred during the course of his first marriage. Applicant's SOR debts include first and second mortgages on a property that went into foreclosure and was sold in 2010. The first mortgage was discharged through foreclosure but the second was not. The debts also include one for a travel trailer that was repossessed and another for a credit card account. Applicant claimed that these debts were the responsibility of his second wife.

In completing a security clearance application (SCA) in 2012, Applicant did not disclose his delinquent debts. Specifically, he denied that he had defaulted on a loan, had debts turned over to collection agencies, had credit cards suspended, or had been more than 120 days delinquent on his debts. His "no" answers to these questions were false. He claimed that, when he completed the SCA, he did not know the extent of his wife's financial misconduct or the extent of his debts. However, AE C, an agreement that Applicant and his second wife signed months before he completed the SCA, describes some of Applicant's debts and demonstrates his knowledge of them. Applicant also stated that he did not put sufficient effort into filling out the SCA.

Former servicemen who served with Applicant commend him for his dedication and trustworthiness. They recommend him for a position of trust.

The Judge's Analysis

The Judge resolved the bankruptcy discharge in Applicant's favor. He reached the opposite conclusion for the remaining allegations. He noted evidence that Applicant's second wife contributed to his financial problems. However, he found Applicant's presentation to be vague in some respects, and he stated that Applicant seemed to believe that, once his ex-wife had admitted her misconduct, he had no further responsibility to resolve his financial delinquencies. The Judge concluded that Applicant had not presented clear evidence in mitigation of the Guideline F concerns. Regarding Guideline E, the Judge found that Applicant's omissions were deliberate. He stated that Applicant knew, or should have known, about his delinquent debts.

Discussion

Applicant contends that the Judge erred in his application of the mitigating conditions. He argues that the debts at issue were incurred years in the past and were due to the conduct of his ex-wife. He contends that the decision was based on evidence collected in 2012, which presumably renders the evidence outdated. He also cites to his successful military career. The Judge made findings about the evidence that Applicant discusses in his brief and addressed it in the Analysis portion of the Decision. Applicant's reliance upon the age of his debts is not persuasive. It is well established that an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions. *See, e.g.*, ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016); ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Applicant has not explicitly challenged the Judge's findings and conclusions under Guideline E. However, he argues that the Judge failed to perform a meaningful whole-person analysis and that the Judge's adverse decision was arbitrary, capricious, and contrary to law. We conclude that this argument reasonably embraces the allegation that he falsified his SCA. In that regard, in evaluating whether an applicant's false statements or omissions are deliberate, a Judge must consider them in light of the entirety of the record. *See, e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

In this case, the Judge appears to have done so. For example, he made findings about apparently inconsistent statements by Applicant that undermined his credibility—on one hand the claim that he had completed his SCA hurriedly, on the other that he actually did not know about the debts in question. *See, e.g.*, ISCR Case No. 14-01056 at 3 (App. Bd. Aug. 17, 2015). The Judge also cited to Applicant's own evidence to the effect that he was aware of his financial condition months prior to completion of the SCA.¹ All in all, the Judge's findings and conclusions about Applicant's omissions are sustainable. The Judge's whole-person analysis regarding the entirety of Applicant's security-significant conduct complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 14-06653 at 3 (App. Bd. Nov. 18, 2016).

Applicant states that he has lost a job because of his loss of a clearance and that he now works in a position that pays less money and offers fewer career options. The Directive does not

¹The Judge questioned Applicant about AE C, the agreement between Applicant and his ex-wife concerning responsibility for marital debts. “[Judge]: I understand that . . . you were attempting to divide up the debt . . . But, before that date, they were your debts as well as hers. Right? You understood that at that time? [Applicant]: I knew that technically they were mine because they were in my name. [Judge]: Right. [Applicant] So, the creditors would be coming after me.” Tr. at 55. This testimony is not consistent with Applicant's claim that, when he completed his SCA, he did not know about his debts. The Judge also questioned Applicant about the second mortgage on his house. Although Applicant had earlier denied knowing about this debt, he admitted to the Judge that he himself, rather than his wife, had taken out the loan. When the Judge asked him why he did not disclose this debt in his SCA, Applicant replied, “The very short answer is I was a knucklehead.” Tr. at 59-61.

permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-02619 at 3 (App. Bd. Apr. 7, 2016). Applicant requests that, if we are not able to reverse the Judge’s conclusions, we grant him an interim clearance to give him an opportunity to demonstrate financial responsibility. We have no authority to grant an interim, conditional, or probationary clearance. *See, e.g.*, ISCR Case No. 14-04289 at 2 (App. Bd. Sep. 9, 2015).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, regarding both 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 E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board