



capricious, or contrary to law. Consistent with the following, we reverse the Judge's unfavorable decision.

The SOR alleged that Applicant falsified material facts in his 2012 security clearance application (SCA) by deliberately failing to disclose a state tax lien and seven other delinquent debts. The Judge found in favor of Applicant on the state tax lien allegation and against him on the allegation concerning the other debts.

In his appeal brief, Applicant provided character reference letters that he did not previously submit to the Judge. Those letters constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1. 29.

Applicant also claims that he did his best in filling out the SCA, including listing his debts. He notes that he listed some delinquent debts in his SCA and argues, why would he list some debts, if he intended to conceal any debts. Applicant raised this same issue below and the Judge addressed it by stating:

Applicant did, in fact, list three past-due debts; and avers that the largest, alleged unlisted debt, for \$1,060 (b.(2)), is a duplicate of one of those he did disclose. . . He further avers, "I did my best to list everything I had knowledge of." Even assuming his averment as to the duplicate past-due debt is correct, it is clear from his January 2013 Subject Interview, to which Applicant had no objection, he was aware of at least four of the six remaining past-due debts (b.(3), b.(4), b.(6), and b.(7)). Furthermore, without letters of support from those who know Applicant and who can testify as to his truthfulness and veracity, I cannot find that Applicant's not listing six past-due debts, totaling in excess of \$1,100, was a simple oversight. This allegation is found against Applicant.<sup>1</sup>

A review of the subject interview does not support the Judge's finding that Applicant was "aware" of four debts when he filled out his SCA. Instead, the subject interview reflects that Applicant "thought" each of those debts was for a specific purpose. His thinking a debt was for a specific purpose, after its existence is brought to his attention during the subject interview, does not equate to him being "aware" of that debt when he filled out the SCA. Rather, the subject interview reads in a way consistent with Applicant's reaction to each debt as they were presented. We conclude the Judge erred in making that finding of fact.

We also find persuasive Applicant's argument about disclosing delinquent debts in his SCA. In that document, he disclosed three delinquent debts totaling about \$5,600. As the Judge noted, excluding the alleged debt that was a duplicate of one Applicant had disclosed, he did not disclose six debts totaling about \$1,100. Applicant appropriately raises the question of why would he disclose about 80% of his indebtedness and deliberately omit the remaining 20%. He adequately put the Government on notice of his financial problems. It is not reasonable to conclude that his

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<sup>1</sup> Decision at 2.

failure to disclose the relatively small percentage of his remaining indebtedness constituted falsification.

Applicant has consistently denied that he falsified his SCA. The burden was on the Government to establish either by direct or circumstantial evidence that Applicant deliberately falsified his SCA. Directive ¶ E3.1.14. From our review of the record, we conclude that the Government failed to establish by substantial evidence that Applicant deliberately failed to disclose debts in his SCA. *See, e.g.*, ISCR Case No. 03-09483 at 3 (App. Bd. Nov. 17, 2004) for the proposition that proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. Based on the foregoing, the Judge's adverse decision was arbitrary, capricious, and contrary to law.

### **Order**

The Decision is **REVERSED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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