



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 62-year-old employee of a Federal contractor. He was employed by Federal contractors between 2005 and 2015. In 2015, he was laid off from his job due to medical problems. His employer is still sponsoring him for a security clearance.

Applicant's background investigation revealed that he was charged in 2006 with sexual assault (a felony) and indecent assault (a misdemeanor), pled guilty to the indecent assault charge, was sentenced to prison for 7 to 23 months, and was later placed on probation. The investigation also revealed that he was charged in 1975 with theft of a car, conspiracy to commit theft, operating a vehicle without the owner's consent, corruption of minors, and conspiracy to corrupt minors. He was convicted of corruption of minors, was sentenced to imprisonment for 23 months, and was later placed on parole. His parole was revoked for his failure to comply with its terms. He was paroled again and later released from parole. The investigation also revealed he has numerous debts that were over 120 days delinquent or had been turned over to collection agencies.

In 2015, Applicant submitted a security clearance application (SCA) in which he responded "No" to the question that asked if he was ever charged with a felony offense. He explained that he did not disclose the 2006 sexual assault charge on his SCA because he pled guilty to the indecent assault charge and the felony charge was dismissed. He did not offer an explanation for omitting the 1975 felony offense.

In responding to pertinent questions in his 2015 SCA, Applicant did not disclose that he had delinquent debts or debts in collection. In a background interview, he admitted that he knew he had delinquent accounts, but told the investigator he did not disclose them in his SCA because he could not recall the details of each account. He claimed he paid some of the accounts, made some partial payments, and entered into some payment arrangements, but submitted no documentary evidence to corroborate those claims.

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

Applicant's financial problems are recent and ongoing. While his financial problems may have resulted from conditions beyond his control, he presented no evidence that he has been financially responsible under the circumstances. He presented no evidence to show that his financial problems are being resolved.

Considering Applicant's age, education, work experience, his statement to the investigator, and his SOR answer, his SCA omissions were deliberate and made with the intent to mislead the Government. It is not credible that he forgot about the felony charges. His claims of honest mistake or lack of recollection for not disclosing them are also not credible. He acknowledged his delinquent

debts and explained he did not disclose them because he did not have all the information for each account. He has not mitigated the falsification security concerns.

## **Discussion**

Applicant contends that he did not intentionally provide false responses on his SCA. He notes that he “was not convicted of the crime” (presumably referring to the felony sexual assault charge in 2006) and was unaware of his medical debt. Appeal Brief at 1 and 2. In the brief, he does not specifically address his failure to disclose his 1975 charges or the resulting conviction in his SCA. In analyzing an applicant’s intent, a Judge must consider the applicant’s answers in light of the entire record. *See, e.g.*, ISCR Case No. 10-04821 at 4 (App. Bd. May 21, 2012). We give deference to a Judge’s credibility determination. Directive E3.1.32.1. We also note the wording of the questions at issue, which a reasonable person could find to be clear and unambiguous, undercuts Applicant’s claim that he was confused or misunderstood the questions. The Judge’s findings as to the deliberate nature of the omissions are sustainable.

Applicant also contends that the Judge erred in finding that he was sentenced to prison for 7 to 23 months. He claims that he was sentenced to seven days of imprisonment. Law enforcement records in evidence, however, support the Judge’s findings about the length of Applicant’s prison sentences. *See*, Items 7 and 8 of Department Counsel’s File of Relevant Material. He further noted the Judge erred in finding he had a son instead of a daughter; however, this was a harmless error because it likely had no affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

Applicant states that he has disputed his bad debts and that he was informed they will be removed from his credit report within 60 to 90 days. This information constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. The balance of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence, which is not sufficient to show the Judge weighed the evidence in a manner that is arbitrary, capricious, and contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 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, 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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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