

KEYWORD: Guideline E; Guideline F

DIGEST: A falsification, even in the face of an applicant’s denial of such conduct, can be established through circumstantial evidence. Additionally, we are required to give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. From our review of the record, the Judge’s material findings about the falsification allegation are supported by substantial record evidence. Adverse decision affirmed.

CASENO: 17-01047.a1

DATE: 12/10/2018

DATE: December 10, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 17-01047
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 24, 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 27, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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. The Judge’s favorable findings under Guideline F were not raised as an issue on appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant has held a security clearance since 2010. The SOR alleged that she falsified her October 2015 security clearance application (SCA) by failing to disclose two delinquent debts. In 2009, she filed Chapter 7 bankruptcy and received a discharge of over \$92,000 in unsecured debts the following year. She disclosed that bankruptcy in her 2015 SCA, but did not disclose a charged-off debt for about \$13,000 and a collection account for about \$2,800.

The collection account was the result of a landlord imposing a charge in 2013 for Applicant breaking an apartment lease. In a 2014 background interview, she stated that she was not aware of that charge until a collection agency had contacted her a couple of months earlier. She made two small payments toward that debt. In September 2015, the landlord filed a collection action against her. She claimed she did not know about the collection action when she filled out the SCA about a month later. She settled the debt in July 2016.

The charged-off account is an automobile debt that became delinquent in 2014 and was charged off in March 2015. In 2013, Applicant attempted to sell the car. The buyer made a payment to the auto company. Initially the company reported the payment cleared but later reported it was returned for insufficient funds. She filed a report with the police. In 2015, the car was recovered and Applicant was informed the car would be sold at auction and she would be responsible for any deficiency. In her 2016 background interview, she stated the car was sold and she owed a deficiency of about \$13,000. She considered the matter resolved and decided not to make any more payments for a car she no longer possessed.

Applicant’s program manager and a coworker attested to her dependability and reliability. She also presented character evidence that she is an active member in her church.

The Judge’s Analysis

Applicant claimed the omission of the two debts from her October 2015 SCA was unintentional because she was only thinking about the bankruptcy when she filled out that application. The Judge concluded that Applicant knew of the existence of both delinquent debts

when she filled out her SCA. The Judge stated that her oversight explanation was not credible because of the size of the charged-off auto debt and her interactions with the auto company, insurance company, and police in late 2012 and 2013 regarding that debt. While Applicant may not have known the rental collection debt was sold to a collection company, she knew she owed money for breaking the lease in 2013. This falsification continues to cast doubt on her trustworthiness and judgment.

Discussion

Applicant contends that her omission of the delinquent debts on her SCA was unintentional and, in making that argument, points out that she disclosed in that document her previous bankruptcy and discussed the omissions during a background interview. We note that Applicant has not challenged any of the Judge's specific findings of fact pertaining to the falsification allegation. A falsification, even in the face of an applicant's denial of such conduct, can be established through circumstantial evidence. *See, e.g.*, ISCR Case No. 00-0044 at 3 (App. Bd. Dec. 22, 2000). Additionally, we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 16-01077 at 3 (App. Bd. Apr. 25, 2018). From our review of the record, the Judge's material findings about the falsification allegation are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018). Applicant failed to establish that the Judge erred in concluding that she falsified her SCA.

Applicant also contends that the Judge did not consider or properly weigh all relevant evidence. For example, she argues the Judge did not consider evidence regarding her honesty and integrity or the steps she has take to prevent such omissions in the future. Her arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor 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. 15-01717 at 4 (App. Bd. Jul. 3, 2017). We further conclude the Judge considered the totality of the evidence in compliance with the whole-person analysis requirements. *See* Directive, Enclosure 2 ¶ 2.

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

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

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