

KEYWORD: Guideline E; Guideline F

DIGEST: The Judge’s findings are supported by substantial evidence, that is, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. Adverse decision affirmed.

CASENO: 17-02145.a1

DATE: 09/10/2018

DATE: September 10, 2018

In Re:	)	
	)	
-----	)	ISCR Case No. 17-02145
	)	
Applicant for Security Clearance	)	

**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 July 28, 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 June 22, 2018, after the hearing, 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 employed by a Defense contractor. He has previously served in the military, retiring in 2006. He has held a clearance since at least 1994. Applicant’s SOR lists three delinquent debts. The first is based upon a car loan that he co-signed for his daughter, who became unable to make payments after a divorce. Applicant told his clearance interviewer that he recognized his liability as a co-signer but that he did not intend to pay the debt. At the hearing he denied making this statement. After the hearing he submitted a statement to the effect that Applicant’s daughter and ex-husband had refinanced the car, but he provided no corroboration for this assertion.

Applicant had a \$675 medical debt that he believed his insurance company should have paid, but he paid it himself in early 2017. He also claimed that a small debt to a book club had been paid in full, although he provided no documentation in support.

In 2016, Applicant plugged a personal activity tracker into his work computer, which was virtually identical to his personal one. The activity tracker was not authorized, and his work computer locked up, sending an electronic message to security officials. No classified information was compromised. Applicant’s employer suspended his access to classified information pending an investigation. The Government client whom Applicant’s job supported requested that he be removed from the contract because he could not perform work with a suspended clearance. Therefore, Applicant’s employer terminated him. Although the employer offered to rehire him, Applicant had taken his current job and did not accept the offer.

In completing his security clearance application (SCA), Applicant did not disclose his delinquent automobile loan, medical debt, or debt to the book club. In his Answer to the SOR, he acknowledged that he had responded to the questions incorrectly but stated that this was due to haste in completing his SCA. He also failed to disclose his having been fired from his previous employment. He stated that he had left the job because it was temporary, although in his Answer to the SOR he stated that he had quit by mutual agreement because of a motorcycle injury.

Applicant’s current income is about \$145,000. He has about \$10,000 in savings and about \$40,000 in a retirement account.

## The Judge's Analysis

The Judge noted that Applicant is financially secure and able to pay his debts. He has provided no documentation to show that the largest, the car loan, has been resolved. The Judge concluded that Applicant's debts are recent and numerous. He also concluded that, although the car loan delinquency resulted from his daughter's divorce, he had not demonstrated responsible action, nor has he provided documentary evidence to show that this debt has been resolved. Regarding Guideline E, the Judge found that Applicant was aware of the car loan debt but that he felt no responsibility to resolve it. He found Applicant's explanation for his omission of this debt to be unconvincing and noted that Applicant is educated and has been through the clearance process enough times to understand in the importance of accuracy and candor. The Judge stated that Applicant did not admit this debt until he had been confronted with evidence by his interviewer. He also cited to inconsistent statements that Applicant made concerning his omission of the job termination. He concluded that these omissions were not minor and did not occur under unusual circumstances.

## Discussion

Applicant contends that his omissions from his SCA were not deliberate. When evaluating the deliberate nature of an applicant's omissions or false statements, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 15-08163 at 4 (App. Bd. Oct. 25, 2017).

In the case before us, viewing the challenged findings in light of the record as a whole, we conclude that they are sustainable. The Judge cited to statements that Applicant made during the processing of his SCA that were not consistent among themselves, and inconsistent statements can impugn a witness's credibility. *See, e.g.*, ISCR Case No. 15-03778 at 3 (App. Bd. Aug. 4, 2017). Moreover, the Judge's findings about Applicant's education and his experience in undergoing security investigations support a conclusion that Applicant understood the need for complete truthfulness, thereby lessening the chance that he acted through mere haste, ignorance, or inexperience. The Judge's findings are supported by substantial evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 17-00506 at 3 (App. Bd. Aug. 7, 2018).

The balance of Applicant's appeal brief is an argument that the Judge did not consider all of the evidence in the record or that he mis-weighed the evidence. However, 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. 17-02391 at 4 (App. Bd. Aug. 7, 2018). We give due consideration to the Hearing Office case that Applicant has cited. However, Hearing Office decisions are binding neither on other Hearing Office Judges or on the Appeal Board. Each case must be decided on its own merits. *Id.*

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: James E. Moody

James E. Moody  
Administrative Judge  
Member, 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