

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant raised the sufficiency of the interview summary for the first time on appeal.
Adverse decision affirmed.

CASENO: 17-03252.a1

DATE: 08/13/2018

DATE: August 13, 2018

In Re:

Applicant for Public Trust Position

ADP Case No. 17-03252

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Jessica Coronado, Esq.

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On October 13, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 decision on the written record. On May 25, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Pamela C. Benson denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in finding that Applicant’s omission of information from his application was deliberate and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: Applicant served in the military from 2005 through 2010 and received an Honorable Discharge.¹ He had some delinquent debts, for such things as a credit card account, a delinquent car loan, and other accounts that had been placed in collection status. Applicant did not disclose his delinquent debts on his application for a position of trust. During his clearance interview, he initially advised that he had no financial issues to report. When confronted by the investigator with his delinquent debts, Applicant stated that his problems were due to living beyond his means but that he had omitted this information merely through oversight. In his Answer to the SOR, he admitted that he had failed to disclose his debts on his application but attributed the omissions to computer problems.

The Judge’s Analysis

The Judge cleared Applicant of the trustworthiness concerns arising from his delinquent debts. However, she reached the opposite conclusion regarding Guideline E. The Judge cited to evidence that Applicant knew of his debts at the time he completed his application and during his background interview. She also cited to his inconsistent statements about his omissions and to his initial denial of financial problems during his interview. The Judge concluded that Applicant’s inconsistent statements impugned his credibility. The Judge found that Applicant’s falsification of his application raised trustworthiness concerns that were not mitigated.

¹In his application, at p. 17, Applicant stated that he had received an Honorable Discharge. During his clearance interview, he acknowledged that he had received a General Discharge Under Honorable Conditions. Item 3, Interview Summary, at p. 4. This was not alleged in the SOR and the Judge made no further reference to it.

Discussion

Applicant denies that he deliberately omitted material information during the processing of his application. Among other things, he argues that the interview summary does not accurately depict his answers to the interviewer. He reiterates his contention that he left the information off his application due to oversight.

Regarding the sufficiency of the interview summary, Applicant raised this matter for the first time on appeal. The File of Relevant Information (FORM) notified Applicant that the interview summary was included as evidence. The FORM stated that Applicant could comment on the summary, and make corrections, deletions, updates, etc. in order to make the summary accurate. The FORM, albeit in a footnote, also advised Applicant that he could object to the summary on the grounds that it was not authenticated and that, if he did not object, the Judge could find the objection to have been waived and consider the summary as evidence. Applicant's Response to the FORM made no reference to the summary and offered no objection to any government exhibits. It was reasonable for the Judge to conclude that any objection had been waived.

We have considered Applicant's arguments regarding the finding of deliberate omission in light of the entirety of the record. The challenged finding is supported by Applicant's acknowledgment to the interviewer that he had experienced financial problems for years, thereby showing knowledge of his debts at the time he completed his application. The finding is also supported by the Judge's adverse credibility determination, to which we are required to give deference. Directive ¶ E3.1.32.1. The Judge's statement that Applicant made inconsistent statements is supported by the record, and inconsistent statements can undermine an applicant's credibility. *See, e.g.*, ISCR Case No. 15-03778 at 3 (App. Bd. Aug. 4, 2017). After considering the record as a whole, we conclude that the finding of deliberate omission is 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 also* ADP Case No. 17-00260 at 2 (App. Bd. Apr. 25, 2018).

After considering Applicant's brief as a whole, we conclude that he has cited to no harmful error in the Judge's decision. The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Refusal to provide truthful answers to lawful questions will normally result in an adverse trustworthiness determination. Directive, Encl. 2, App. A ¶ 15.

The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.*, ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

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