

the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 17, 2007, after the hearing, Administrative Judge Thomas M. Crean denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings are based upon substantial record evidence; and whether the Judge’s adverse decision is arbitrary, capricious, and contrary to law. Finding no error, we affirm.¹

The Judge found that Applicant had unpaid debts, including two federal income tax liens of \$68,588.55 and \$18,951.24 respectively. He also had a charged off “bank account debt” for \$110. Applicant denied knowledge of this debt and had taken no action “to inquire or dispute” it. Decision at 4. Another debt, to a car rental agency, was in dispute at the time of the decision. In 1987, Applicant was discharged in Chapter 7 bankruptcy. He continued to incur debt, however, and filed again for bankruptcy protection, under Chapter 13, in 1991. He was discharged in 1998. Regarding the tax liens, Applicant did not file federal income tax returns for many years between 1980 and 2005. Additionally, when asked on his security clearance application (SCA) if he had debts that had been delinquent over 90 days and over 180 days respectively, he answered “no,” despite these tax liens and the bank debt.

We have examined the Judge’s decision and conclude that his findings are supported by substantial record evidence. The Judge’s conclusion that Applicant knowingly provided false information on his SCA is sustainable.² The Judge weighed the evidence supplied by Applicant and considered the application of relevant mitigating conditions, finding in Applicant’s favor on some of the Guideline F security concerns, including those pertaining to his bankruptcy proceedings.³ Nevertheless, the record supports the Judge’s conclusion that Applicant failed to meet his burden of persuasion that it is clearly consistent with the interests of national security for him to have a

¹The Judge’s favorable decision as to subparagraphs 1(a-d) and (h-j) of Guideline F is not at issue in this appeal.

²“Applicant testified that in response to the question concerning the tax liens, he knew of the liens but thought the liens were against him personally and not against property since he owned no property . . . His reading of the question is . . . unreasonable . . . by a college graduate. Likewise, Applicant stated he did not know he had debts past due over 180 days or 90 days. Applicant knew [of the tax liens]. He thought he possibly could have other debts but he did not even make an effort to learn of his debts before he completed the security clearance application. His actions in not learning of the exact nature of his debts before responding to the questions on the [SCA] show a deliberate action to omit relevant security matters.” Decision at 9.

³SOR 1(i, j).

security clearance.⁴ Accordingly, the Board holds that the Judge’s decision is neither arbitrary, capricious, nor contrary to law.

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

⁴Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See Directive ¶ E3.1.15*. “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).