

KEYWORD: Guideline H; Guideline E; Guideline F

DIGEST: The Judge’s conclusion that Applicant deliberately falsified his Security Clearance Application is consistent with the record evidence. Adverse decision affirmed.

CASENO: 14-00586.a1

DATE: 02/13/2015

DATE: February 13, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-00586
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 12, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6

(Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 21, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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 H are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Defense contractor. His recent performance appraisal rated him well on judgment and trustworthiness. Applicant married his current wife in 2013, following a 2008 divorce from his previous wife.

Applicant first smoked marijuana in 2002. He did so because he had trouble sleeping. He used marijuana about 50 times between 2002 and 2008 or 2009. He asserts that most of his drug usage occurred when he was not working for Defense contractors.

Applicant completed security clearance applications (SCAs) in 2008 and again in 2013. On neither SCA did he disclose his drug use. His explanation was that he had stopped using marijuana and did not consider it part of his life. He also stated that he did not understand the ramifications of answering SCA questions falsely. He was interviewed following each SCA. He does not remember being asked about illegal drugs, but he acknowledged that he did not admit to his misconduct. He stated that, at the time of the interviews, he believed his drug usage to have been an old issue.

Applicant has had financial problems. Such problems were the basis for Guideline F allegations that resulted in a DOHA hearing in 2010. Following that hearing, the Judge granted Applicant a clearance.¹ He did so because he concluded that Applicant's debts were the result of circumstances outside his control and that Applicant had acted responsibly in regard to these debts.

Applicant still carries some of the debt load alleged in the earlier SOR. However, he also has acquired new delinquent debts since then. One is a lien for delinquent Federal income tax owed for tax year 2007. He has made payments toward satisfying this debt, and he has hired a lawyer to negotiate a repayment plan.

Some of the other debts alleged in the current SOR were for real estate foreclosures, delinquent credit cards, etc. Applicant is trying to have some of his debts removed from his credit reports because they have been charged off by the creditors and are beyond the statute of limitations.

¹The Judge in the 2010 case was different from the one in the case before us.

Applicant and his wife have made changes to their lifestyle, such as having obtained cheaper transportation and avoiding unnecessary entertainment costs. He is complying with financial requirements of his decree of divorce from his prior spouse, and he is repaying a loan from his mother.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under each of the Guidelines alleged in the SOR. He cleared Applicant under Guideline H. However, he found against Applicant for the remaining two. The Judge stated that Applicant had not attempted to correct his omissions from the SCAs and, indeed, would not have admitted them yet but for their discovery during the current investigation. The Judge concluded that Applicant's lack of candor continues to cast doubt upon his fitness for a clearance. The Judge also noted that Applicant had addressed only two of the debts alleged in the current SOR. Moreover, one of these that he had addressed, the tax debt, was paid down through an involuntary bank levy. Though Applicant's total debt load is much lower than in 2010, the Judge characterized it as significant. He cited to evidence that Applicant is relying on the statute of limitations rather than establishing payment plans for his debts.

In the whole-person analysis, the Judge cited to Applicants good work record, stable second marriage, and to evidence that his drug use is behind him. However, he stated that Applicant's untruthfulness "weighs heavily against a finding that he can be trusted in a classified environment." Decision at 10. He stated that this interference with the Government's ability to evaluate his suitability for a clearance, combined with Applicant's ongoing debt problems, raise doubts that must be resolved in favor of national security.

Discussion

Applicant argues that the Judge erred in his conclusions about mitigation. He states that he was forthcoming about his prior drug use upon receipt of DOHA interrogatories. He also cites to evidence that his overall debt load has decreased substantially since his prior adjudication. He noted the Judge's finding that he had addressed only two of the SOR debts. He contends that he has established priorities for debt repayment, thereby showing responsibility in the handling of his finances. Applicant argues that his debt history in and of itself looks bad but, viewed in context, demonstrates that he is serious about resolving his problems. He cites to evidence of his good work performance and his stable marriage and argues that he is working hard to correct past mistakes.

We have considered Applicant's appeal brief in light of the record as a whole. The Judge's conclusion that Applicant deliberately falsified his SCA and did not attempt to correct his omissions until DOHA confronted him with evidence of his drug use is consistent with the record that was before him. In essence, Applicant's arguments regarding his delinquent debts are merely an alternative interpretation of the record, which is not enough to show that the Judge weighed the evidence in an erroneous manner. *See, e.g.*, ISCR Case No. 14-00683 at 3 (App. Bd. Jan. 28, 2015). The Judge made detailed findings about Applicant's circumstances, including his good work record

and his family life. Applicant's brief is insufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-00606 at 3 (App. Bd. Jan. 28, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Refusal to provide full, frank, and truthful answers to lawful questions of clearance investigators "will normally result in an unfavorable clearance action[.]" Directive, Enclosure 2 ¶ 15. Failure to satisfy debts may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. *Id.* ¶ 18. "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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board