

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant has delinquent debts exceeding \$23,000.00 and did not truthfully answer questions about the debts on his security clearance application. The Judge articulated a satisfactory explanation for her conclusion that Applicant failed to meet his burden of persuasion regarding the Guideline E security concern. Adverse decision affirmed.

CASENO: 07-16028.a1

DATE: 10/09/2008

DATE: October 9, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-16028
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 12, 2008, DOHA 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 decision on the written record. On July 10, 2008, after considering the record, Administrative Judge Joan Caton Anthony 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 of fact are supported by substantial record evidence; whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is 58 years old and holds a B.S. degree in business and management. He served in the U.S. military from 1969 to 1977 and has held a security clearance since 1969.

Applicant has delinquent debts exceeding \$23,000, which originated during a period of underemployment from 2001 until 2004. The debts resulted from his use of three credit cards to pay living expenses. These debts are owed to two separate creditors and were unpaid as of the close of the record. When completing his security clearance application (SCA), Applicant answered “no” to questions inquiring about debts over 90 days and 180 days. These answers were not true, in light of the ongoing debts described above. Additionally, Applicant had previously filed for Chapter 13 bankruptcy protection, which was subsequently dismissed due to his failure to comply with the terms of the payment plan.

We have examined the Judge’s decision in light of the record as a whole. The Judge’s material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence 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.”) Viewed in light of the entire record, the Judge’s conclusion that Applicant deliberately falsified his SCA is sustainable.¹ Furthermore, the Judge has articulated a satisfactory explanation for her conclusion that Applicant has failed to meet his burden of persuasion regarding the Guideline E security concern. *See* Directive ¶ E3.1.15 (After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns); *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’”). In this regard, the Board notes that Applicant chose to have the case decided upon the written record, with the result that his credibility could not be evaluated in the context of a hearing. *See* ISCR Case No. 08-00899 at 3 (App. Bd. Jul. 29, 2008). Accordingly, the Judge’s adverse decision under Guideline E is sustainable. In light of

¹“Given his previous acknowledgment of [his delinquent] debts in . . . January 2005 . . . and his expressed intent at that time to contact his creditors and pay his debts, Applicant’s denials on his May 15, 2007 [SCA] were not credible.” Decision at 8.

this conclusion, the Board need not address the Guideline F issues raised on appeal.

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