

KEYWORD: Guideline F; Guideline E

DIGEST: Errors in the Judge’s findings of fact did not likely affect the outcome of the case. Therefore, they are harmless. Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASE NO: 08-11345.a1

DATE: 10/06/2010

DATE: October 6, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-11345
)	
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 August 24, 2009, 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 hearing. On July 20, 2010, after the hearing, Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed 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 were in error; whether the Judge failed to consider all of the record evidence; whether the Judge

mis-weighed the record evidence; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge found in Applicant's favor as to all of the allegations under Guideline F. However, he found against him for certain of the allegations under Guideline E. He made the following pertinent findings: Applicant is an engineer specialist working for a Defense contractor. From 1999 until 2004 Applicant worked for a public utility company. He was laid off from work in 2004 and was out of work for a year. He returned to work for the company in 2005 and in 2007 began his current employment.

In completing his security clearance application (SCA), Applicant answered no to four questions: (1) whether Applicant had ever had any property repossessed; (2) whether Applicant had ever had a lien placed against his property due to failure to pay taxes or other debts; (3) whether, within the previous seven years, Applicant had been over 180 days delinquent on any debts; and (4) whether Applicant were currently over 90 days delinquent on any debts.

These negative answers were untrue. In fact, Applicant and his son had had a truck repossessed due to non-payment; the IRS had taken a lien against Applicant's property due to non-payment of tax; and this same IRS debt had been delinquent over 180 days and over 90 days for purposes of the SCA questions at issue.

The Judge further found that Applicant's answers to these four questions were deliberate. He stated that the questions themselves were clear and that, under the circumstances of the case, Applicant's claims of good-faith mistake and/or confusion were not credible.

Applicant enjoys a good reputation for his trustworthiness, honesty, dependability, and for the quality of his job performance. He received excellent evaluations by his employer for the 2009 rating period.

Factual Sufficiency

Applicant contends that the Judge erred in some of his findings. He claims, for example, that the Judge erred in his finding that the omissions on the SCA were deliberate. He claims that the Judge erred by mis-identifying which of his sons had been a co-lessee with him on the repossessed truck; by finding that Applicant had received a degree from college; and by finding that Applicant had withdrawn \$50,000 from his 401k plan. Applicant also contends that the Judge committed other factual errors, including mis-identifying his daughters as having come from his current marriage and under-stating the number of years Applicant had worked for the public utility company.

We review the Judge's findings of facts to determine if they are supported by substantial evidence—"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. We note the Judge's finding about the clarity of the questions involved. We also note record evidence that Applicant attended a university for nearly two years, thereby demonstrating an educational level that would render less likely claims not to have understood the questions. In light of the record, the

Judge's findings about the deliberate nature of Applicant's omissions are sustainable. Regarding the remaining challenged findings, even if they contain errors, they are not such as would have affected the outcome of the case.¹ See ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009). Therefore, they are harmless. The Judge's material findings of security concern are sustainable.

Remaining Issues

Applicant contends that the Judge did not consider all of the evidence, for example his excellent work performance and his good financial record prior to his lay-off from work. However, a Judge is presumed to have considered all of the record evidence. See, e.g., ISCR Case No. 08-05637 at 3 (App. Bd. Sep. 9, 2010). In this case, the Judge found in Applicant's favor regarding the Guideline F concerns. His adverse findings pertain to the false answers on Applicant's SCA, alleged under Guideline E. Under the facts of this case, evidence of prior good financial management is not relevant to security concerns arising from Applicant's false answers.

Additionally, the Judge made specific findings about Applicant's job performance and good reputation. Moreover, the record supports a conclusion that the Judge complied with the requirements of Directive, Enclosure 2 ¶ 2(a) in arriving at his decision. Applicant's presentation on appeal is not sufficient to rebut the presumption that the Judge considered all of the record evidence.

Applicant contends that the Judge did not properly weigh the record evidence, relying too much on Applicant's years of unemployment. Again, however, Applicant's appeal brief is not sufficient to demonstrate that the Judge weighed the evidence in an arbitrary or capricious manner. See, e.g., ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009).

After reviewing the record, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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).

Order

¹The Judge's finding about the length of time Applicant worked for the utility company is supported by Government Exhibit (GE) 1, Applicant's SCA, at 13. The finding about Applicant's withdrawal of \$50,000 from his 401k is supported by Applicant's testimony at Tr. 51. The Judge's finding about Applicant's having received a college degree is error. GE 1 at 10. The finding concerning the son with whom Applicant co-leased the truck appears to be error. Tr. at 86. The record evidence is not clear concerning the finding about Applicant's daughters.

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. 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