

KEYWORD: Guideline F; Guideline E

DIGEST: Judge did not err in concluding that Applicant's having failed to permit inquiry into his IRS records raised Guideline E security concerns. Applicant failed to meet his burden of persuasion regarding security concerns arising from his failure to cooperate, his omissions from the SCA, and his delinquent debts. Adverse decision affirmed.

CASE NO: 09-06260.a1

DATE: 09/02/2010

DATE: September 2, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-06260
)	
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 26, 2010, 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 June 25, 2010, after the hearing,

Administrative Judge Elizabeth M. Matchinski 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 the Judge erred in her application of the Guideline E disqualifying conditions; whether the Judge erred in concluding that his omissions from the SCA were deliberate; whether the Judge erred in her application of the mitigating conditions; and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a technical network engineer employed by a Defense contractor. He served in the U.S. military from 1987 to 1990.

In around 2000, Applicant was employed by a contractor who did not withhold taxes from his pay. Being unable to pay his taxes for 2000 (he had gone some weeks without work, due to bad weather, etc.), he simply did not file returns. He did not file returns for years 2001 through 2004 as well. Although he has subsequently filed his returns and paid off his debt to the state, at the close of the record he owed over \$90,000 to the IRS. He has entered into an installment plan with the IRS and has made four monthly payments of \$200 toward satisfaction of his tax debt.

Applicant completed his security clearance application (SCA) in January 2010. One question asked if he had been over 180 days delinquent on any debt and another if he were currently over 90 days delinquent on any debt. Applicant did not list his state and federal tax debts in answering these questions. Additionally, at his interview, Applicant declined to sign a release authorizing investigators to verify his delinquent taxes with the IRS. He was concerned that, if he did so, his payment plan with the IRS might be jeopardized.

Applicant enjoys a good reputation for the quality of his job performance, his integrity, and his accountability.

Applicant contends that the Judge erred in her application of the Guideline E disqualifying conditions. For example, he argues that the Judge erred in concluding that his having failed to permit inquiry into his IRS records raised security concerns. We have considered Applicant's argument in light of the Judge's decision and the record. The Judge found that this evidence did not constitute an outright refusal to cooperate, given the fact that Applicant provided the investigator with truthful information about the extent of his IRS debt.¹ However, she concluded that this refusal nevertheless reflected poorly upon Applicant's judgment and raised Personal Conduct Disqualifying Condition 16(d).² Applicant "exhibited poor judgment in putting his personal interest before the

¹See Directive, Enclosure 2 ¶ 15: "The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility: (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to . . . completing security forms or releases[.]"

²Directive, Enclosure 2 ¶ 16(d): "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment . . . or other characteristics indicating that

Government's legitimate request for information needed for proper adjudication." Decision at 11. This conclusion, viewed in light of the record, is reasonable. Accordingly, the Judge did not err in raising this disqualifying condition.

Additionally, Applicant contends that the Judge erred in concluding that his omissions from the SCA were deliberate. However, the Judge noted that Applicant was aware that he had owed money both to the state as well as the IRS during the time period addressed in the questions. She concluded that his testimony that he believed financial delinquency applied only to consumer debt to be unworthy of belief. She also cited to inconsistent statements which further diminished the credibility of his testimony regarding his omissions from the SCA.³ The Judge's conclusion that Applicant deliberately omitted information about his tax debts is sustainable.

While the Judge concluded that Applicant had mitigated some of the allegations in the SOR, she further concluded that he had failed to mitigate his substantial IRS debt, his failure to list his tax debts on the SCA, and his failure to authorize inquiry into his IRS debt. She concluded that Applicant had not demonstrated a sufficient track record of debt repayment to meet his burden of persuasion under Guideline F. Furthermore, she found that Applicant's explanation about his decision not to sign the release, and his explanation as to why he did not reveal his tax delinquencies on the SCA, impugned his credibility and undermined his case for mitigation.

After reviewing the record, the Board concludes 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).

the person may not properly safeguard protected information."

³Applicant's subject interview summary, included in Government Exhibit 2, Response to Interrogatories, at 3, describes Applicant as telling the interviewer that, in completing his SCA, he had forgotten about his tax issue. At the hearing, however, Applicant denied having made that statement. Tr. at 91. The Judge provided a reasonable explanation for her conclusion that this denial was not believable.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board