

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant has five delinquent debts and omitted material information from his security clearance application. The Judge’s material findings are sustainable. Adverse decision affirmed.

CASENO: 09-06691.ai

DATE: 05/16/2011

DATE: May 16, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-06691
)	
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 June 25, 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 March 9, 2011, after the hearing, Administrative Judge Philip S. Howe 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 supported by substantial record evidence; whether the transcript contained errors; whether the Judge failed to consider or mis-weighed record evidence favorable to Applicant; whether the Judge's application of the mitigating conditions was erroneous; and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a physicist, employed by a Defense contractor. He received a B.A. degree from a U.S. university, a masters degree from a European university, and a Ph.D. in theoretical physics from another European university.

Applicant has lived in his home for 27 years and has a mortgage balance of \$233,000. He has refinanced over the years. Applicant claims to have a collection of sound recordings valued at \$600,000.¹ Applicant filed for Chapter 13 bankruptcy protection in 1993 to delay foreclosure on his mortgage. After obtaining employment, he withdrew the petition. He has five delinquent debts, for credit cards, a department store account, and an arrearage on his mortgage. The debts alleged in the SOR total \$21,193.

Applicant's work history includes several periods of unemployment. In 1983 he resigned from his first employer due to personality conflicts and again, in 1992, he was terminated from another employer for a similar reason. In 1990, he was laid off from an employer due to corporate downsizing, although he admitted that he had personality conflicts with another employee. In September 2004, he was terminated from employment due to allegations that he missed an important meeting and failed to follow his supervisor's instructions. "Applicant considered the supervisor to be intellectually and educationally inferior to him, causing a conflict between the two men." Decision at 3. Applicant denied having received a termination letter. Subsequently, he worked as a physicist at a university, from February 2005 to December 2005. He was terminated from that position, the stated reason being Applicant's unsatisfactory performance in mastering a computer coding function and in other assigned tasks.

The Judge also found that Applicant worked at another company from August 2006 to October 2006 but "was terminated because of cultural differences." Decision at 4. He found that Applicant worked at a company as a lead engineer from March 2007 until June 2008 but was terminated due to unsatisfactory performance.

¹"I have a significant fine arts collection, some of them in short and excess of \$600,000, which would regrettably be used as a source of income, as a last resort." Tr. at 69. "[Judge]: And in 1997, in the personal financial statement, under assets, it lists 'miscellaneous \$100,000 collections.' Do you recall what those were? [Applicant] No, your honor, I don't . . . It may have been the same collections that have been re-valued. The collection has been appraised several times. [Judge]: So, these consist of what, paintings? [Applicant]: No, actually my most prized collection consists of sound recordings . . . records." Tr. at 151-152.

Applicant completed his security clearance application (SCA) in 2007. Question 22 asked if he had ever left a job under unfavorable circumstances in the previous seven years. Applicant listed two such incidents but did not list the job termination in September 2004. Additionally, he omitted a state tax lien and a \$4,000 judgment against him in favor of a credit card company. The Judge stated that Applicant's contention that the omissions were honest mistakes was not credible.

Applicant enjoys an excellent reputation for his scholarly abilities, his candor, and his integrity.

In the Analysis portion of the Decision, the Judge concluded that Applicant had not demonstrated responsible action in regard to his debts. Applicant has not paid them off, though apparently he has the financial ability to do so. The Judge concluded that Applicant has no desire to pay his debts and "intends to ignore them." Decision at 13. The Judge noted that Applicant still owes \$229,000 on his home, in which he has lived for 27 years. He stated that Applicant "denies taking equity from the home and contends he only refinanced his mortgage over the years to obtain a lower interest rate. However, the mortgage balance remains high. The facts seem to belie his assertion about his mortgage refinancings." Decision at 8. The Judge stated that Applicant's job terminations raise questions about his judgment and willingness to comply with rules, regulations, and procedures. Moreover, he concluded that Applicant's omissions to the SCA had been deliberate. All in all, the Judge concluded that Applicant had failed to meet his burden of persuasion as to mitigation.

Applicant contends that the transcript contains numerous errors, which he had identified in writing, though to whom he has not stated. He asserts that these errors often reversed the intended meaning of the testimony and reduced the clarity and effectiveness of his presentation. However, he has not identified any portion of the transcript which he believes to have been erroneous. Indeed, he quotes the transcript liberally throughout his brief, relying on it in support of his appeal and occasionally endorsing the transcript's accuracy. *See, e.g.*, the following: "The tax lien and credit card judgment were understandable omissions. The pages cited in the transcript (Tr. 137-139) contain a proper explanation that there is no reason to doubt, especially in view of my established reputation for honesty." App. Brief at 2. Again, in challenging the Judge's negative assessment of his demeanor, Applicant states, "[T]he hearing transcript, poor though it is, confirms that I maintained my dignity and demeanor and was, at all times, courteous and respectful." App. Brief at 6. Accordingly, this particular assignment of error fails for lack of specificity. *See, e.g.*, ISCR Case No. 08-01306 at 3 (App. Bd. Oct. 28, 2009).

Applicant contends that several of the Judge's findings of fact were not based upon substantial record evidence. For example, he challenges the finding that he denied having received a termination letter in September 2004. He states that he did not recall receiving the letter but did not actually deny having received it. He also challenges the Judge's finding that he had been terminated from employment in June 2008 due to unsatisfactory performance, asserting that he has always denied having ever been terminated from any job due to that reason. However, on this last point, we note the following: "[Department Counsel]: Did [Company] terminate you? Applicant: Yes. [Department Counsel]: What were the grounds? Applicant: Again, unsatisfactory

performance.” Tr. at 135. We have considered Applicant’s other challenges to the Judge’s findings as well. Viewed in light of the record as a whole, the Judge’s material findings are based upon substantial evidence, or constitute reasonable inferences therefrom. Applicant has not identified any harmful error likely to change the outcome of the case. *See, e.g.*, ISCR Case No. 08-11735 at 2-3 (App. Bd. Sep. 21, 2010).

Applicant contends that the Judge failed to consider record evidence favorable to him, for example his evidence of good character and security worthiness. However, a Judge is presumed to have considered all the record evidence. *See, e.g.*, ISCR Case No. 09-07395 at 3 (App. Bd. Sep. 14, 2010). Applicant has not rebutted this presumption. Neither has he demonstrated that the Judge mis-weighed the record evidence. Applicant points to his having held a security clearance for many years, without incident or concern. This was evidence that the Judge was required to consider, along with all the other evidence in the record. However, the Government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009), citing *Adams v. Laird*, 420 F. 2d 230, 238-239 (D. C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970).

The record supports a conclusion 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,’” both as to the mitigating conditions and the whole-person factors. *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). *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 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