

KEYWORD: Guideline F; Guideline G

DIGEST: Applicant cites to a statement from the interview summary. The is mere a summation of Applicant's statement to the interviewer; it does not represent the interviewer's opinion of Applicant's character. Adverse decision affirmed.

CASENO: 12-04343.a1

DATE: 05/21/2013

DATE: May 21, 2013

In Re:)
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 -----) ADP Case No. 12-04343
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 Applicant for Position of Trust)
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)

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 trustworthiness designation. On October 17, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations),

Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 5, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello denied Applicant's request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in finding that Applicant had deliberately misled the investigator; whether the Judge failed properly to apply the mitigating conditions; 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 failed to file timely federal income tax returns for the years 2000, 2001, 2002, 2003, 2004, 2009, 2010, and 2011. Applicant failed to pay his federal income taxes in full and on time for the years 2000 through 2011. Applicant estimates he currently owes \$50,000 in delinquent federal income taxes, penalties and interest. Applicant also has some minor non-tax delinquent debts.

Applicant had two driving under the influence (DUI) convictions in the 1980's. In the 1990's Applicant attended outpatient alcohol treatment for over a year, at the request of his wife. He believes that he was an alcoholic at that time but he no longer believes he is an alcoholic.

Applicant completed his SCA in 2011. After signing the SCA, he purchased a six pack of beer on a drive to visit friends in another city. He had consumed three beers when he was stopped for speeding in a 75 mile an hour zone. He declined a breathalyzer. Several initial charges were consolidated into DUI. He eventually pled guilty to reckless driving. Three months after the arrest, a government investigator asked Applicant if he had been arrested for any alcohol related offenses beyond those from the 1980's. Applicant said "no." After he was confronted with the 2011 arrest, Applicant described it as a traffic offense. The investigator specifically asked if it was a DUI. Only then did Applicant explain the circumstances of the arrest. At the hearing Applicant asserted he had misconstrued the investigator's inquiry to be about convictions. The Judge found that Applicant had deliberately failed to disclose his alcohol related arrest to the investigator. She further found Applicant's explanation was not credible.

Applicant enjoys a good reputation for integrity and enthusiasm.

The Judge found against Applicant under all three guidelines. However, she issued favorable findings with regard to three debts and an allegation under Guideline G. The favorable findings are not at issue on appeal.

Applicant contends that the Judge erred in finding that he had deliberately misled the investigator. However, the Judge's decision demonstrates that she considered Applicant's testimony in light of the record as a whole, taking into account his explanation for the omissions. The Board gives deference to a Judge's credibility determinations. *See* Directive ¶ E3.1.32.1. The Judge's finding is sustainable on this record.

Applicant contends that the Judge failed to consider all of the record evidence or that she mis-weighed the evidence. He cites to several matters in the record, particularly to the following statement taken from the interview summary: “There is nothing in the subject’s background conduct or life style, including everything discussed above , which could be used to blackmail or coerce the subject . . .” Government Exhibit 2. However, the statement in question is merely a summary of what Applicant had stated to the interviewer; it does not represent the interviewer’s opinion of Applicant’s character. Regarding the other evidentiary matters cited by Applicant, we conclude that he has not rebutted the presumption that the Judge considered all of the record evidence. *See, e.g.*, ADP Case No. 11-11592 at 2 (App. Bd. Aug. 23,2013). Neither has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ADP Case No. 10-027047 at 2 (App. Bd. Oct 12, 2011).

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 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