

KEYWORD: Guideline F; Guideline E

DIGEST: The Judge concluded that Applicant did not corroborate his claims to have made good-faith efforts to resolve his debts. The Judge also concluded that Applicant had failed to demonstrate any mitigating condition under Guideline E. These conclusions are sustainable on this record Adverse decision affirmed.

CASENO: 11-08831.a1

DATE: 11/06/2013

DATE: November 6, 2013

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

John B. Glendon, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 1, 2012, DoD 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 August 29, 2013, after the hearing, Defense Office

of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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's findings of fact contain errors; whether the Judge considered all of the evidence in the record; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant is indebted to the Internal Revenue Service (IRS), as evidenced by tax liens totaling \$1,024,000. In March 2005, he filed his IRS return for tax year 2002, and in early 2013 he filed tax returns for tax years 2003 through 2009. Applicant owes the IRS about \$200,000 in back taxes, and he is currently working on a repayment plan. Applicant's debt to the IRS is outstanding.

Applicant is indebted to his state taxing authority, as evidenced by tax liens totaling about \$286,000. In 2012 he filed his state tax return for tax year 2002 and in early 2013 he filed returns for tax years 2003 through 2009. He still owes the state about \$1,503 in back taxes.

Applicant has past-due debts for child support. He has been ordered by a court to make a lump sum payment of \$15,000 and then minimum monthly payments of \$1,100 until the debt is satisfied. This debt is ongoing.

In completing his security clearance application (SCA), Applicant answered "no" to several questions pertinent to his financial condition: whether he had paid his taxes in a timely fashion, whether he had any tax liens, and whether he had any past due debts in excess of 90 or 180 days. These answers were untrue. He claimed that someone else completed his SCA for him and that he did not look at it closely before signing it. Applicant stated that he had provided information to the person completing his SCA but was unclear as to the content of this information. Applicant's omissions were willful falsifications.

### **The Judge's Analysis**

The Judge concluded that Applicant's circumstances raised security concerns under both Guidelines alleged in the SOR. In concluding that Applicant had failed to meet his burden of persuasion under Guideline F, the Judge stated that Applicant did not corroborate his claims to have made good-faith efforts to resolve his debts. The Judge also concluded that Applicant had failed to demonstrate any mitigating condition under Guideline E.

### **Discussion**

Applicant contends that the Judge erred in some of his findings of fact. For example, he challenges the Judge's finding that he had deliberately falsified his SCA. In evaluating whether an applicant's omissions or false answers are deliberate, a Judge must examine the statements in light of the record as a whole. *See, e.g.*, ISCR Case No. 09-07551 at 4 (App. Bd. Mar. 1, 2011). In this case, the Judge's treatment of this issue is admittedly cursory. However, we note the clarity of the

questions at issue here and the number of omissions, which, under the facts of this case, militate against a conclusion of honest mistakes.<sup>1</sup> We note that Applicant's explanations for the omissions were not totally consistent. For example, in his clearance interview, he stated that his security officer had filled out the SCA and that he had read it hurriedly before signing, reasonably implying that he did not notice the omissions. Clearance Interview at 2, included in Government Exhibit 8, Answers to Interrogatories. However, at the hearing, Applicant testified that he had answered the questions as he did because of a belief that he did not owe the debts in question.<sup>2</sup> The record as a whole supports the Judge's finding.

Applicant challenges the Judge's finding that he still owed \$200,000 to the IRS, contending that the actual amount is much lower. He also contends that he owes nothing to his state. Applicant testified, however, that he had liens for back Federal taxes in an amount over \$1,000,000 and that these liens were outstanding as of the date of the hearing. Tr. at 69. The \$200,000 amount was derived from Applicant's own evidence. See AE Z, Letter from IRS Taxpayer Advocate, at 3. Applicant also testified that he had outstanding liens to his state. Tr. at 69-70. The Judge's finding as to the extent of Applicant's state tax delinquencies was based on Notices of State Income Taxes Due, also an Applicant exhibit. AE Y. Even if there are errors in the Judge's findings, they did not likely affect the outcome of the case. We have considered the entirety of Applicant's arguments regarding the sufficiency of the Judge's findings. The Judge's material findings of security concern are based upon substantial record evidence. See, e.g., ISCR Case No. 08-11735 at 2 (App. Bd. Sep. 21, 2010).

Applicant cites to evidence that, in performing his official duties, he has provided support to the U.S. in attaining its military and governmental objectives. This was evidence that the Judge was required to consider, alongside all the other evidence in the record. In the whole-person analysis, the Judge cited to Applicant's evidence of good duty performance. However, his overall adverse decision was supportable. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. See, e.g., ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). In support of his appeal, Applicant has submitted evidence not contained in the record concerning his child support obligations. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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

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<sup>1</sup>See ISCR Case No. 06-23613 at 4 (App. Bd. Feb. 4, 2013) (number of false statements by the applicant was a factor that supported the Judge's finding of deliberate falsification); ISCR Case No. 07-03307 at 5 (App. Bd. Sep. 26, 2008) (multiple nature of contemporaneous false statements was a factor the Judge should have addressed in analyzing the applicant's intent to deceive).

<sup>2</sup>"[Q]: But as far as [f]illing out this form, this . . . was for you to fill out the form and you knew you had those outstanding problems or at least issues, right? [A]: Yes, but in the back of my mind I knew because when I was running through my taxes that I really didn't owe that kind of money." Tr. at 83.

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