

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. We defer to a Judge’s credibility determination. Applicant’s inconsistent statements supported the Judge’s adverse credibility determination. Adverse decision affirmed.

CASE NO: 11-10612.a1

DATE: 09/05/2013

DATE: September 5, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-10612
)	
Applicant for Security Clearance)	

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 security clearance. On February 6, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 5, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served in the military from 1982 to 2002. He has worked for Federal contractors since 2003 and has worked for the same employer since 2008. He has received an excellent performance rating at work.

The Judge found that Applicant has numerous delinquent debts for medical expenses, phone services, Federal income tax, credit cards, etc. Although Applicant claimed to have paid or settled many of these debts, he provided no corroboration. Applicant was discharged in Chapter 13 bankruptcy in 1999. In 2008 and 2011 he filed again under Chapter 13, but both filings were dismissed due to lack of payment. Applicant has attributed his financial problems to a period of unemployment after he had retired from the military and to a divorce. The Judge noted evidence that, in 2009, Applicant took a week-long trip to the Caribbean to play in a poker tournament. The Judge's findings cited to numerous instances of inconsistent statements made by Applicant in the course of the processing of his clearance application. For example, the Judge found that Applicant had stopped paying on a personal loan in the amount of \$7,359. At the hearing, Applicant claimed that this debt had been cancelled by the creditor. However, in an interview, Applicant had stated that the creditor would not work with him and that he had included this debt in his bankruptcy plan. Applicant submitted no documentary proof of payment, and the debt remained on Applicant's credit report at the close of the record.

The Judge's Analysis

The Judge stated that Applicant's circumstances raised concerns under Guideline F. He stated that, despite having the means to pay, Applicant had failed to follow through with the repayment schedules set forth in his bankruptcy plans. He stated that Applicant spends beyond his means and refuses to satisfy obligations he freely entered into in the past. The Judge concluded that Applicant had failed to demonstrate mitigation. He stated that, although Applicant asserted that his problems arose from circumstances beyond his control, "the record is replete with evidence that his financial problems are related to his lavish spending habits . . ." Decision at 7. Although Applicant received counseling during the course of his bankruptcy filings, the Judge concluded that the counseling had exerted no appreciable effect. In the whole-person analysis, the Judge stated that Applicant's hearing testimony was less than credible. He stated that the inconsistencies among Applicant's various statements were not the result of faulty memory or poor record keeping but were deliberate attempts to mislead. "Consequently, I am left with *substantial* doubts about his continued eligibility for access to classified information." *Id.* at 8 (emphasis in original).

Discussion

Applicant cites to record evidence of his unemployment and his divorce. He also notes that he has held a clearance for many years without incident or concern, that he has received counseling, and that he has done a good job at his office. The Judge made findings about the evidence Applicant has cited. Applicant has not rebutted the presumption that the Judge considered all of the evidence.

See, e.g., ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012). Applicant states that he was truthful in responding to questions. We construe this as challenging the Judge’s adverse credibility determination. We give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. We have compared the Judge’s findings with the record evidence. Many of Applicant’s claims at the hearing about debt resolution were not totally consistent with claims he had made during his clearance interview. The Judge’s conclusion that these inconsistencies were deliberate is supportable based on the record that was before him.

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 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board