

KEYWORD: Guideline E; Guideline F

DIGEST: Applicant does not explain why she answered “No” to the question asking whether she had any property voluntarily or involuntarily repossessed in the last seven years when her vehicle was voluntarily repossessed less than three years earlier. Second, she is again arguing facts not in evidence, which we cannot consider and do not establish that the Judge erred in her decision. From our review of the record, the Judge’s conclusion that Applicant intentionally falsified her SCA is supported by substantial record evidence. Adverse decision affirmed.

CASENO: 17-03638.a1

DATE: 01/02/2019

DATE: January 2, 2019

In Re: _____)
-----) ISCR Case No. 17-03638
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 December 8, 2017, 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 October 1, 2018, after the hearing, Administrative Judge Nichole L. Noel 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 findings and conclusions and whether Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has been working for a Federal contractor since mid-2017. She has previously held a security clearance. In completing a security clearance application (SCA) in May 2017, she did not disclose any derogatory financial information. An ensuing investigation revealed she filed Chapter 7 bankruptcy in 2005 and had a number of delinquent accounts, including owing over \$7,000 on a vehicle that was repossessed in 2014.

In about 1999, Applicant's husband was diagnosed with a serious illness that resulted in significant medical expenses. Shortly after returning to work, he lost his job, which resulted in a significant decrease in the household income. They received a Chapter 7 bankruptcy discharge in 2005. For approximately six months after the bankruptcy discharge, they remained financially stable until he again lost his job. Both of them have sporadic work histories. "Between 2004 and 2017, Applicant has held 11 jobs and experienced 6 periods of unemployment, the longest of which lasted from May 2004 to March 2008." Decision at 2. Applicant made payments towards two of the alleged debts. After her background interview, she contacted three other creditors to establish payment plans for debts. She did not know how to contact the lender of the repossessed vehicle when the loan servicer went out of business. She did not make payment arrangements for medical debts when she learned those debts were charged off.

Applicant interpreted the financial questions on her SCA as seeking information about liens against property. "Because she does not own any property, she did not believe the questions applied to her situation and skipped the next set of questions regarding delinquencies involving routine accounts, which sought information about automobile repossession and collection accounts. At the hearing, Applicant testified that she did not intend to falsify her security clearance application." Decision at 3.

The Judge's Analysis

Applicant receives partial mitigation credit because circumstances beyond her control caused her financial problems. However those problems are ongoing and she does not have the means to address them at this time.

Applicant failed to disclose information in her SCA about any of her delinquent debts, including a repossessed vehicle. She claims that the omissions were due to her misunderstanding the question. She has completed an SCA in the past and the language of the question is clear on its face. The record supports a finding that she intentionally falsified her SCA.

Discussion

Applicant's brief includes character reference letters that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant rightly challenges some of the Judge's findings and conclusions. First, she contends the Judge erred in finding she was unemployed from May 2004 to December 2008. Her SCA employment history reflects that she was employed during that period.¹ Next, Applicant highlights a problem with the falsification allegation that asserted she falsified her SCA by answering "No" to pertinent financial record questions, "whereas, in fact, [she] knew of some or all of the debts listed in Subparagraphs 1.a through 1.m" under Guideline F. (SOR ¶ 2.a). Applicant correctly points out that one of those Guideline F allegations (SOR ¶ 1.a) pertained to her 2005 Chapter 7 bankruptcy, which was outside of the SCA's seven-year reporting requirement for bankruptcies. Consequently, the bankruptcy allegation should not have been incorporated into the falsification allegation. Although the Judge erred in finding that Applicant was unemployed between 2004 and 2009 and erred by failing to note that Applicant did not falsify her SCA when she did not disclose the bankruptcy, we conclude those errors were harmless because they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). The Judge's other findings and conclusions were sufficient to support the unfavorable clearance decision.

Applicant also challenges the Judge's conclusions in the Analysis section that Applicant is a prior clearance holder, has completed a SCA in the past, and should have known the importance of providing full and complete answers to the SCA questions. Applicant argues the Judge erred because she did not disclose her financial problems in the prior SCA, was also confused when she filled out her prior SCA, and later discussed her financial problems during the prior background interview. We do not find merit in Applicant's argument. Applicant's prior SCA and background interview are not part of the record of this proceeding. She is arguing facts not in evidence, which we cannot consider. Directive ¶ E3.1.29. On the other hand, the Judge's conclusions in question are based on substantial record evidence (*i.e.*, Applicant's more recent SCA (Government Exhibit 1) in which she disclosed that she previously held a security clearance and had her background investigated) or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

¹ At the hearing, the Judge specifically asked Applicant whether her longest period of employment was from May 2004 to March 2008, and Applicant responded in the affirmative. Tr. at 21-22. The Judge's error regarding Applicant's employment history appears to be an oversight in drafting the decision.

Applicant further argues that she did not intentionally falsify her SCA. However, her argument is not fully consistent with her hearing testimony and is not persuasive. As the Judge found, Applicant testified at the hearing that she misunderstood the SCA question regarding liens. Specifically, Applicant testified that she did not have any liens and “**if I would have understood the question more I would have listed all my debts** in there. But I didn’t understand, I thought it meant for a house and I rented so I didn’t have a lien against my house.”² [Emphasis Added.] Tr. at 30 and 35. Based on that testimony, the Judge inferred that Applicant skipped the remaining questions regarding other financial delinquencies. On appeal, Applicant raises for the first time that she had a problem with the computer program and was not given the option to answer the remaining financial delinquency questions. In her brief, she states:

After I answered the question that I marked no that I didn’t have any possessions or property voluntarily or involuntarily repossessed it didn’t give the option of the other questions that were listed as soon as I marked “no” it went on to the next set of questions and I don’t remember making “no” for the 120 days delinquent for any debt.³

First, Applicant does not explain why she answered “No” to the question asking whether she had any property voluntarily or involuntarily repossessed in the last seven years when her vehicle was voluntarily repossessed less than three years earlier. Second, she is again arguing facts not in evidence, which we cannot consider and do not establish that the Judge erred in her decision. From our review of the record, the Judge’s conclusion that Applicant intentionally falsified her SCA is supported by substantial record evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3.⁴

The remainder of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence. Those arguments are not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

The Judge examined the relevant evidence 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*

² In Section 26 of the SCA, the question involving liens falls under a category of questions entitled “**Delinquency Involving Enforcement**,” while the questions involving repossession, defaults on loan, collection accounts, charged-off debts, debts over 120 days delinquent, etc. fall under a category of questions entitled “**Delinquency Involving Routine Accounts**.” GE 1.

³ Appeal Brief at 1. Applicant does not explain why she did not seek assistance if she encountered a problem with the SCA computer program, why she did not make an appropriate notation in the Additional Comments about the computer glitch or her debts, or why she certified the incomplete SCA as being “true, complete, and correct to the best of [her] knowledge and belief.” GE 1.

⁴ The Judge did not make a specific finding regarding Applicant’s credibility. However, implicit in her findings is a determination that she did not believe Applicant’s testimony. The Directive provides that we must give deference to a Judge’s credibility determination. Directive ¶ E3.1.32.1.

of the Navy v. Egan, 484 U.S. 518, 528 (1988). See also Directive, Encl. 2, App A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed, James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board