

KEYWORD: Guideline E; Guideline F

DIGEST: As best we can discern, Applicant is challenging the Judge's conclusions that he falsified his SCA by failing to disclose he was fired from a job in 2011 and had reportable delinquent debts. The SOR did not allege that Applicant falsified his SCA. From our review of the record, the Judge's findings about Applicant falsifying his SCA were based on substantial evidence or constituted reasonable inferences that could be drawn from the record. A Judge may consider conduct not alleged for purposes such as evaluating an applicant's evidence in mitigation, assessing credibility, or applying the whole-person concept. We find no basis for concluding the Judge considered non-alleged conduct in an inappropriate manner. Adverse decision affirmed.

CASENO: 12-06431.al

DATE: 03/07/2019

DATE: March 7, 2019

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 19, 2016, 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). On January 10, 2018, the SOR was amended by withdrawing some Guideline F allegations and adding Guideline E (Personal Conduct) allegations. Applicant requested a hearing. On September 24, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzelman 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 Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is 57 years old, has worked off and on for defense contractors since the early 1990s. He has married twice and has three children. In 2011, he was fired from a company for improperly charging about 530 hours of work to Government contracts. Although he received training regarding timecard accounting, he claims he did not know he improperly charged hours to the Government. He contends that he kept personal time records and only failed to account for 60 hours. Due to his conduct, he was barred from working on Executive Branch contracts from May 2012 to March 2015. He was given an opportunity to present evidence challenging the debarment, but did not provide matters in opposition.

In February 2012, Applicant completed a security clearance application (SCA) at another company in which he did not disclose his prior employment termination. He indicated he left that job due to downsizing. He also failed to disclose that he had two debts over 120 days delinquent and had a vehicle recently repossessed. While he testified that an agency hired to help him complete the SCA failed to disclose negative information in that form, he also acknowledged he knew the information was not truthful when he signed it.

At the time of the hearing, Applicant had 14 delinquent debts totaling about \$42,000. With the exception of three debts, he admitted each of them. He claims he paid about \$1,000 toward some of the debts, but provided no proof of the payments. His recent credit reports reflect two new delinquent debts totaling over \$800. He and his wife earn about \$227,000 annually. Applicant "blames his financial struggles on his unexpected unemployment in 2011." Decision at 3. Since then, he experienced periods of unemployment, and he and his wife maintained separate households. In 2014, he purchased one vehicle and leased another that resulted in monthly payments of almost \$1,600.

When his first marriage ended in divorce, Applicant filed Chapter 7 bankruptcy, which included credit card debt and the balance owed on a repossessed vehicle. A 2004 JPAS entry reflected Applicant misused a company credit card by making personal purchases totaling over \$4,500. He testified he only charged \$200 and was unaware he could not use the card for personal

purchases. At the time of the hearing, he had not filed his 2017 Federal and state tax returns and owed the IRS about \$50,000 in past-due taxes for 2011-2016. He has been making monthly payments to the IRS of \$690 since 2017.

The Judge's Analysis

Applicant provided no proof of payments to resolve his delinquent debts. His periods of unemployment were not shown to be circumstances beyond his control. His financial problems reflect poor self-control, lack of judgment, and unwillingness to abide by rules and regulations.

Applicant admitted the Guideline E allegations, but disputed the number of hours he improperly charged to the Government. He did not contest his 2012 debarment. He provided false information in his 2012 SCA. His dishonest behavior is not infrequent. At the hearing, he minimized his behavior and failed to accept responsibility for his actions.

Discussion

Applicant's appeal brief contains documents and assertions that are not included in the record. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

As best we can discern, Applicant is challenging the Judge's conclusions that he falsified his SCA by failing to disclose he was fired from a job in 2011 and had reportable delinquent debts. The SOR did not allege that Applicant falsified his SCA. From our review of the record, the Judge's findings about Applicant falsifying his SCA were based on substantial evidence or constituted reasonable inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). A Judge may consider conduct not alleged for purposes such as evaluating an applicant's evidence in mitigation, assessing credibility, or applying the whole-person concept. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017). We find no basis for concluding the Judge considered non-alleged conduct in an inappropriate manner.

Applicant further contends the Judge erred in concluding his periods of unemployment were not conditions beyond his control. In doing so, he states, "It is because, after the termination in 2012, my employment has been very restricted and very unstable, and unemployment occurred very often due to my clearance status." Appeal Brief at 8. Since Applicant's periods of unemployment can be traced back to his wrongful conduct, we find no basis to disturb the Judge's challenged conclusion.

Applicant makes a number of other arguments that are, in essence, a challenge to the Judge's weighing of the evidence. For example, he contends that the number of hours he improperly charged the Government was significantly inflated, that a number of years have passed since that incident happened, that his unexpected firing caused his financial problems, and that he is in the process of resolving his tax problems. Additionally, he challenges the Judge's conclusion that he minimized his behavior and failed to fully accept responsibility. These arguments, however, are insufficient

to show 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).

Finally, Applicant argues, if he is unable to work, he cannot resolve his debts. But, it is well established that the adverse impact that an unfavorable decision may have on an applicant is not a relevant or material consideration in evaluating an applicant's security eligibility. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

Applicant has not established that the Judge committed any harmful errors. 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 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