

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge did not consider all of the record evidence and did not properly apply the mitigating conditions and whole-person concept. For example, he asserts: The Judge fails to make mention that one of the root causes of the financial issues is the untimely and unanticipated health issues of Applicant’s father that caused him to leave his state of residence and travel to [another state] to care for his father. This is a proper mitigating condition under the Guidelines that [the Judge] never mentions. The Judge made a finding of fact that Applicant attended to a family member with a serious illness during his period of unemployment. Applicant’s arguments on appeal are insufficient to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASENO: 17-02851.a1

DATE: 09/26/2019

DATE: September 26, 2019

In Re:)	
)	
-----)	ISCR Case No. 17-02851
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Mark A. Myers, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 5, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 28, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 and Analysis

At the time of the hearing, Applicant was 39 years old and was seeking a security clearance to work for a defense contractor. He has earned three master's degrees. He is single with no children. He was either unemployed or not fully employed for over a year during 2015 and 2016.

Applicant admitted to four incidents of criminal conduct between 1999 and 2014. In 1999, he was charged with felony second-degree burglary and misdemeanor stealing when he and a friend took a vacuum cleaner from a house. He was found guilty of both offenses and placed on probation for five-year and two-year periods. As result of a fight in 2000, he was charged with two felony offenses. A first-degree assault charge alleged that he caused serious physical injury another. This offense occurred when he was striking one individual with a pistol that fell to the ground discharging a round into another individual. He pled guilty to a reduced assault charge and armed criminal action, and he was sentenced to seven years imprisonment for one charge and three years for the other. He served about three years in prison.¹

In 2009, Applicant was charged with operating a vehicle while intoxicated and reckless operation after a single-car accident. He refused a roadside alcohol test. Those charges were disposed of through Applicant's completion of a pretrial intervention program. In 2014, he was charged with second-degree domestic assault, a felony. This occurred when he had an argument and physical altercation with his girlfriend in a restaurant after drinking shots of alcohol. He pled guilty to a misdemeanor domestic assault charge and was sentenced to one year of confinement (suspended) and two years of probation under court supervision. He was also required to complete an alcohol evaluation. The court granted Applicant's request to terminate the probation shortly before he began his current employment.

¹ Since Applicant was sentenced to, and incarcerated for, more than one-year as a result of this conviction, he is disqualified under the Bond Amendment from being granted or renewed access to Sensitive Compartmented Information (SCI), Special Access Programs (SAP), or Restricted Data (RD). See Directive, Encl. 2, App. B ¶ 2.

Applicant also has a history of financial problems. He admitted that he had 16 delinquent accounts totaling about \$41,100. With the assistance of a firm, he entered into a debt resolution agreement in which he agreed to make a monthly payments of about \$300 for 11 delinquent accounts starting in October 2017. He stated he has made all payments under the agreement but did not present supporting documentation. He has not shown that any of the alleged accounts are resolved. He described his financial situation as living paycheck to paycheck and owes about \$200,000 in non-alleged student loans that are in deferment. He expects the student loans to become due about three months after the hearing. Through documents and four witnesses, he presented a wealth of favorable character evidence.

Applicant did not provide sufficient evidence to mitigate his history of criminal conduct. Although he has taken the initial steps to address his financial problems, it is too early to tell if he will adhere to his debt resolution agreement.

Discussion

Applicant does not dispute any of the Judge's findings of fact. He contends that the Judge did not consider all of the record evidence and did not properly apply the mitigating conditions and whole-person concept. For example, he asserts:

[The Judge] fails to make mention that one of the root causes of the financial issues is the untimely and unanticipated health issues of [Applicant's] father that caused him to leave his state of residence and travel to [another state] to care for his father. This is a proper mitigating condition under the Guidelines that [the Judge] never mentions. [Appeal Brief at 7.]

The Judge, however, made a finding of fact that Applicant attended to a family member with a serious illness during his period of unemployment. *See* Decision at 3. Applicant's arguments on appeal are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3 (App. Bd. Aug. 30, 2018). Additionally, Applicant's arguments are not sufficient to establish that the Judge erred in his whole-person analysis.

Applicant has failed to establish harmful error below. 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 access to 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