

KEYWORD: Guideline F

DIGEST: The Board has noted that: "Public confidence in the fairness and integrity of the industrial security program depends, to a large degree, on there being both the substance and the appearance of a fair and impartial adjudication after reasonable consideration of the record evidence as a whole. If an Administrative Judge makes statements or acts in a manner that could lead a reasonable person to question whether the Judge considered all the record evidence, then a party could understandably question whether he or she received fair consideration of the evidence it presented." In this case, the number of errors, some of which are substantial, in the Judge's decision raises this problem. Adverse decision remanded.

CASENO: 18-01601.a1

DATE: 04/25/2019

DATE: April 25, 2019

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 18-01601
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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 June 3, 2018, 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 decision on the written record. On February 27, 2019, after considering the record, Administrative Judge Roger C. Wesley 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 remand.

The Judge’s Findings of Fact and Analysis

Applicant, who is 44 years old, has a child from his first marriage and reported no military service. From 2002 to 2016, he worked for various employers with interspersed brief periods of unemployment and has since worked for his current employer.

The SOR alleged that Applicant had a tax lien for about \$2,600; a charged-off home equity loan for about \$27,000, a mortgage account that was foreclosed in 2013; and a mortgage account that was foreclosed in 2016. Applicant admitted each SOR allegation with explanations. The state tax lien has been resolved. The home equity loan remains outstanding. It is unclear whether either of the foreclosures resulted in deficiency balances. The Judge found for Applicant on the tax lien and against him on the remaining three allegations. Applicant has not established that his finances are sufficiently stabilized to meet the eligibility requirements for holding a security clearance.

Discussion

Applicant challenges some of the Judge’s findings of fact. In doing so, he argues his clearance was revoked based on “inaccurate and or inexact” information.¹ Appeal Brief at 1. We examine disputed findings of fact to determine if they are supported by substantial evidence, *i.e.*, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” *See, e.g.*, ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018)(quoting Directive ¶ E3.1.32.1).

One significant error in the Judge’s findings of fact involves the amount of one of the foreclosed mortgages. In his background interview, Applicant stated that he cosigned a mortgage with his mother that was foreclosed.² The two credit reports in the record reflect the high credit amount for that mortgage loan was about \$86,300. File of Relevant Material (FORM) Items 5 and 6. The Judge, however, found that Applicant had cosigned a note for that mortgage in the amount

¹ One of Applicant’s contentions is that he provided proof that he paid the tax lien. However, the Judge found in favor of him on that allegation.

² This mortgage was alleged in SOR ¶ 1.c.

of \$206,450. The Judge may have mistakenly relied on the amount of a non-alleged mortgage listed in one credit report instead of the foreclosed mortgage alleged in the SOR.³ The Judge also found that it was unclear whether either of the foreclosed mortgages had deficiency balances. The two credit reports in the record, however, both reflect zero balances of each of the foreclosed mortgages. The Judge did not address in his decision the zero balances in the credit reports. Another error involves the Judge's reference to Applicant's "failure to timely file address his state tax obligations" Decision at 5. Tax filing deficiencies were not raised as an issue in this case. Applicant further notes that the Judge erred in finding that his daughter was from his first wife and that he had no military service. Applicant's security clearance application reflects that he served four years in the military and was honorably discharged. FORM Item 3.

The Board has noted that: "Public confidence in the fairness and integrity of the industrial security program depends, to a large degree, on there being both the substance and the appearance of a fair and impartial adjudication after reasonable consideration of the record evidence as a whole. If an Administrative Judge makes statements or acts in a manner that could lead a reasonable person to question whether the Judge considered all the record evidence, then a party could understandably question whether he or she received fair consideration of the evidence it presented." ISCR Case No. 02-23979 at 4 (App. Bd. Aug. 25, 2004). In this case, the number of errors, some of which are substantial, in the Judge's decision raises this problem.

Given the errors identified above, we conclude the best resolution of this appeal is to remand the case to the Judge to correct the errors and to issue another decision consistent with the Directive.

³ The non-alleged mortgage was listed as past-due 90 days in one credit report. FORM Item 6. In his background interview, Applicant indicated that he was able to obtain a loan modification for that mortgage and resolve its delinquency. FORM Item 4.

Order

The Decision is **REMANDED**.

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