

KEYWORD: Guideline F

DIGEST: Applicant has not challenged 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 argues that he presented proof of his good character, judgment, and trustworthiness and has shown his unwavering loyalty to the United States through his years of Government service while holding a security clearance without any incident. His arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 18-02074

DATE: 08/27/2019

DATE: August 27, 2019

In Re:)	
)	
-----)	ISCR Case No. 18-02074
)	
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 January 11, 2019, 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 decision on the written record. On June 25, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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

Applicant is a 33-year-old employee of a defense contractor. He served in the military on active duty for about three years and in the National Guard for about nine years. He received honorable discharges for his military service.

The SOR alleges that Applicant has seven delinquent debts totaling about \$34,800. He admitted each of the debts in his SOR response. These were incurred as a result of a failed business venture. He satisfied three of those debts through settlements. He stated that he is slowly working to resolve the others. He owes about \$29,900 on the remaining three debts. He also indicated that he recently hired a credit repair company to assist him in resolving them. At this point, insufficient evidence has been presented to show his debts are being resolved or are under control.

The SOR also alleges that Applicant was charged with Driving Under the Influence of Alcohol and Driving While Having Measurable Blood Alcohol in early 2017. Later that year, he pled guilty to at least one of those offenses. He was placed on probation for three years, which will end in 2020. He has satisfied all other court requirements. Given his recent conviction and ongoing probation, he has failed to mitigate the criminal conduct security concerns.

Discussion

Applicant has not challenged 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 argues that he presented proof of his good character, judgment, and trustworthiness and has shown his unwavering loyalty to the United States through his years of Government service while holding a security clearance without any incident. His arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor are they 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). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* at 3-4. Additionally, the Judge complied with the requirements of the Directive in her

whole-person analysis by considering the totality of the evidence in reaching her decision.

Applicant has failed to establish the Judge committed any harmful error. 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