KEYWORD: Guideline F

DIGEST: The government is not estopped from making an adverse clearance determination despite prior favorable adjudications. This is especially true in cases, such as this, in which the adverse decision is based on concerns that have persisted since the earlier determination. Applicant's argument is not enough to show that the decision of the Judge was arbitrary, capricious, or contrary to law. Adverse decision is affirmed.

CASE NO: 18-02867.a1

DATE: 01/15/2020

DATE: January 15, 2020

In Re:	
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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 March 13, 2019, 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 hearing. On October 15, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 impaired Applicant's ability to present evidence in mitigation, whether the Judge was biased against him, and 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 has a history of financial problems dating back to 2007, which he attributed to a divorce. He stated that his SOR debts resulted from poor financial decisions, such as buying an expensive car in 2014 and spending money on his girlfriend. He also explained that a period of reduced income and expenses associated with his mother's death affected his financial condition. His delinquencies include back taxes for 2017 and an unnamed tax year, totaling about $2,400. His other past-due debts include consumer debts, mortgage payments, a medical debt, student loans, and a car loan. He demonstrated resolution of the student loan. However, he did not provide documentary evidence that he had resolved, or that he did not owe, any of the other debts alleged in the SOR.

Applicant did not provide sufficient evidence that his financial problems are unlikely to recur. Although Applicant experienced some circumstances that were beyond his control, he failed to present documentary evidence that he had attempted to pay or settle any debts beyond his student loan. He has not received financial counseling, and there is no documentary evidence that he has made arrangements to pay his delinquent taxes or other debts.

Discussion

Applicant states that his financial problems did not prevent a favorable clearance adjudication in 2007 and that his circumstances are no different today than they were then. The government is not estopped from making an adverse clearance determination despite prior favorable adjudications. *See, e.g.*, ISCR Case No. 17-01680 at 3-4 (App. Bd. Jul. 19, 2019). This is especially true in cases, such as this, in which the adverse decision is based on concerns that have persisted since the earlier determination. Applicant's argument is not enough to show that the decision of the Judge was arbitrary, capricious, or contrary to law.

Applicant contends that the Judge did not advise him that he wanted to see documentary evidence regarding all of his debts, rather than simply evidence about his taxes, student loans, and character references. He states that if he had understood what the Judge needed, he could have

provided additional information. At the beginning of the hearing, Applicant offered no documentary evidence but stated that he would like to keep the hearing open because he was awaiting information from the IRS. Tr. at 8-9. During the course of the hearing, Applicant testified about all of his SOR debts, offering no corroboration for his claimed efforts at resolving them. At the end, the Judge advised that he would give Applicant an additional 60 days to provide evidence about payment plans for his tax obligations. He also stated the following to Applicant: "I'll be honest with you. What you've done so far is just not enough . . . you should have been doing this [all] along before now, but in those 60 days, if you can take care of some of these things and document it, then send it to us, okay?" Tr. at 43-44.

It is axiomatic that a Judge has no authority to promise an applicant a clearance or to advise an applicant on the quantum of evidence that would mitigate the concerns in his or her case. *See, e.g.*, ISCR Case No. 16-00420 at 2 (App. Bd. Aug. 7, 2017). Considering the record as a whole, we conclude that Judge did not contravene this principle by suggesting that all Applicant needed do to meet his burden of persuasion was submit such documents as he eventually provided after the close of the record. We note, for example, that the Judge made no reference at all to character letters, Applicant's inclusion of which in his post-hearing submission suggests that he understood that he could provide information beyond his IRS debts. In addition, the Judge's admonition as well as Department Counsel's closing argument, which cited to a total lack of corroboration for Applicant's testimony about his effort at debt resolution, should have placed a retired E-7 from the U.S. military and college graduate on notice that such evidence could enhance his presentation. Tr. at 48. It is reasonable for a Judge to consider the extent to which an applicant has not corroborated his claims of debt resolution. *See, e.g.*, ISCR Case No. 17-01193 at 4 (App. Bd. Jan 22, 2019). We conclude that the Judge did not engender a false expectation in Applicant that his case in mitigation would be sufficient if he provided the documents addressed in his Appeal Brief or that he otherwise dissuaded Applicant from presenting available evidence.

Applicant contends that the Judge was biased against him. He argues that consideration of "objectionable exhibits" regarding his 2007 clearance adjudication unfairly prejudiced the Judge against him. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See, e. g*., ISCR Case No. 16-04112 at 3 (App. Bd. May 28, 2019). In this case, the Judge admitted Applicant's 2007 SCA and a credit report from that year. Government Exhibits 2 and 4. Although he characterizes them as objectionable, Applicant did not object to their admission at the time. Tr. at 12-14. Evidence of a history of financial problems that extend for over a decade was relevant to an evaluation of Applicant's case for mitigation, as well as to a whole-person analysis. There is nothing to suggest that the Judge was unduly influenced by these exhibits, which he did not mention explicitly in the Analysis portion of the Decision. Decision at 5-7. A reasonable person would not likely conclude that the Judge lacked the requisite impartiality.

Applicant argues that the Judge's whole-person analysis was erroneous. He cites, among other things, to his military service, clean disciplinary record, character letters, and his having held a clearance for years without a security incident. A Judge is presumed to have considered all of the evidence in the record, and Applicant's arguments are not sufficient to rebut that presumption. *See,*

e.g., ISCR Case No. 18-01482 at 2 (App. Bd. Sep. 6, 2019). Given the record before him, we conclude that Judge's whole person analysis complied with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching his decision. *See, e.g.,* ISCR Case No. 15-03592 at 2 (App. Bd. Jun. 14, 2017).

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 Y. Ra'anan
Michael Y. 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