

KEYWORD: Guideline F

DIGEST: We have examined the entire record and decision, paying particular attention to the transcript of the hearing. We find nothing therein to suggest that the Judge lacked impartiality or that she entered the hearing with an inflexible predisposition against Applicant. The transcript does not support Applicant's claim of bias. He has neither rebutted the presumption that the Judge was unbiased nor shown that the hearing was conducted in a manner that denied him a fair opportunity to testify. He was provided the due process that the Directive affords him. Adverse decision is affirmed.

CASE NO: 19-01796.a1

DATE: 05/20/2020

DATE: May 20, 2020

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In Re:)	
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)	ISCR Case No. 19-01796
)	
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 July 9, 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 February 20, 2020, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had nine delinquent debts totaling about \$27,400. He denied all of the allegations in his SOR Response. In her decision, the Judge noted that Applicant served in the military from 1981 to 1987 and has worked for defense contractors throughout his civilian career. He encountered financial problems when he was unemployed for a four-month period in 2014 and his mother passed away around that same time. For the past 18 months, he has been earning an annual salary of about \$120,000. Before then, he earned about \$80,000 annually. He maintains three residences, one of them belongs to his girlfriend to which he contributes about \$3000 per month and stays there about twice a week. The Judge found that Applicant testified falsely when he initially denied that one of the alleged debts was his responsibility but later admitted during questioning it was his debt. She ultimately found against him on all of the allegations. She concluded that Applicant has not made an effort to repay his delinquent debts, does not intend to pay most of them, and is waiting until some are no longer on his credit report and potentially unenforceable due to the statute of limitations.

At the outset of his appeal brief, Applicant points out that he has been involved in protecting our country for years and takes umbrage that the Government would conclude an individual is untrustworthy to be granted a security clearance because of his or her debts. We construe this as an argument that his circumstances do not raise security concerns. This argument lacks merit. It is well established that financial problems can raise security concerns. The concern under Guideline F is that delinquent debts may cast doubt upon an applicant’s judgment, self-control, and other characteristics essential to protecting national security information. *See, e.g.*, ISCR Case No. 14-06050 at 2-3 (App. Bd. Feb. 28, 2017). In this case, the Judge’s findings about Applicant’s delinquent debts, viewed in conjunction with his current substantial income, are sufficient to raise concerns about his judgement and self-control, which, in turn, impugn his ability to protect classified information. We find no reason to disturb the Judge’s conclusion that Applicant’s delinquent debts raise disqualifying conditions under Guideline F. *Id.*

Applicant’s appeal brief raises due process issues. He first contends that Department Counsel told him “in an email before the hearing that these hearings are setup in a way people don’t need an attorney. One will see real quit [sic] that wasn’t true. One might not have needed an attorney, but it might have kept the yelling down or if I would have at least brought my own witness.” Appeal Brief at 1. To the extent he may be contending that Department Counsel misled him about the need to hire an attorney, we do not find that argument persuasive. First, the email that Applicant is referencing is not in the record. Second, Applicant consulted with and retained an

attorney to assist him in filing his SOR Response. The attorney submitted Applicant's SOR Response to the DoD Consolidated Adjudications Facility but did not represent him at the hearing. Third, the Judge asked Applicant if he was aware that he could have had an attorney "or someone else to assist" him and he replied in the affirmative. Tr. at 5-6. Fourth, there is a rebuttable presumption that Federal officials and employees carry out their duties in good faith. *See, e.g.*, ISCR Case No. 03-21329 at 2 (App. Bd. Sept. 25, 2006). A party seeking to rebut that presumption has a heavy burden of persuasion on appeal. *Id.* Applicant has not met that heavy burden of establishing that Department Counsel misled him in any manner.

A central theme running throughout Applicant's appeal brief is that he was not provided a fair hearing. This contention has two aspects. First, he essentially claims the Judge was biased against him. He repeatedly asserts that the Judge yelled at him, talked down to him, cut him off, did not listen to him, put words in his mouth, badgered him, and did not read his exhibits before becoming convinced the debts were his responsibility. He states, ". . . this Judge doesn't want to hear anything I have to say. I think her mind was made up before I even came into the room . . ." and ". . . I am not sure she has heard anything that I had to say what little it was, if she did hear it, she just ignored it unless it was an answer she could use against me." Appeal Brief at 8. He also asserts the Judge teamed up with Department Counsel against him. The second aspect of Applicant's contention raises another due process issue. He contends that the Judge did not let him talk at times during the hearing, implying he was not given a fair opportunity to testify.

Bias involves partiality for or against a party, predisposition to decide a case or issue without regard to the merits, or other indicia of a lack of impartiality. *See, e.g.*, ISCR Case No. 16-03451 at 3 (App. Bd. Dec. 26, 2017). 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. *Id.* Moreover, "expressions of impatience, dissatisfaction, annoyance, even anger" do not establish bias. "A Judge's ordinary effort at courtroom administration—even a stern and short-tempered Judge's ordinary efforts at courtroom administration—remain immune." *Liteky, et. al. v. United States*, 510 U.S. 540 at 555-556 (1994).

We have examined the entire record and decision, paying particular attention to the transcript of the hearing. We find nothing therein to suggest that the Judge lacked impartiality or that she entered the hearing with an inflexible predisposition against Applicant. She did not impede Applicant's presentation of his evidence, and her questioning appears to have been directed toward clarifying the record. Of note, the Judge permitted Applicant to start testifying without interruption until he stopped. Tr. at 23-29. When he asked the Judge questions about how best to proceed, she responded that he could proceed in any manner that he wanted. Tr. at 23, 29, and 32. Department Counsel did not begin her cross-examination until Applicant indicated that he had nothing further to present. Tr. at 32. During her cross-examination, Department Counsel allowed Applicant to address the debts in the order in which wanted when he apparently became confused. Tr. at 33-34. At the end of the hearing, he was provided multiple opportunities to testify about any other matters that he wished to address. Tr. at 79, 81-82, and 86. The transcript does not support Applicant's claim of bias. He has neither rebutted the presumption that the Judge was unbiased nor shown that

the hearing was conducted in a manner the denied him a fair opportunity to testify. He was provided the due process that the Directive affords him.

As a related matter, Applicant notes that he reviewed some of the Judge's prior decisions and argues her decision in his case was "a fill in the blank form letter she has used over and over so no wonder she didn't listen through half of the hearing. She just had to fill in a few blanks and done. Not even an original document." Appeal Brief at 8. This argument is frivolous. Applicant's brief does not identify any of the Judge's prior decisions that he is referencing. An review of the decision does not support his claim. In this case, the Judge, like other DOHA judges, followed a standard format in drafting her decision. However, from our review of the 13-page decision, the Judge specifically tailored her findings of fact, analysis, conclusions, and whole-person assessment to the record evidence in this case. As required by the Directive, this case was judged on its own merits. *See Directive, Encl 2, App. A ¶ 2(b).*

Applicant argues that the evidence was not sufficient to support the Judge's decision. In his appeal brief, he has made various assertions about his responsibility for the alleged debts, including inconsistent statements. For example, he asserts the Government had no hard evidence to prove any of the debts were his responsibility and the credit reports offered into evidence were full of inaccuracies. He notes the alleged debts were incurred more than five years ago and claims he has no memory of them. He states that, when he disputed the debts, he was not convinced they were his responsibility because some of the creditors failed to provide him with credit agreements that he signed. He also acknowledges, "I have said all 9 of these debts in SOR are mine and I have said all 9 of these debts in the SOR are not mine." Appeal Brief at 12.

In her decision, the Judge noted that Applicant disclosed four of the alleged debts in his security clearance application (SCA) and discussed others in his background interview. The Judge found: "All of the delinquent debts alleged in the SOR are corroborated by Applicant's disclosures in his SCA; admissions made during his background interview; responses to interrogatories, his SOR answer and exhibits . . . ; credit reports . . . ; and Applicant's testimony." Decision at 9. From our review of the record, the Judge's material findings and conclusions of a security concern are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g., ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019).*

In his appeal brief, Applicant contends that the Judge gave insufficient weight to the mitigating evidence and did not consider evidence that he presented. Based on our review of the record, his arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017).*

Applicant has failed to establish 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