

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge’s decision is flawed because it places undue weight on “the onetime occurrence of a financial debt due to a home foreclosure, as a direct result of the 2008 housing market collapse[,]” and it did not fully take into consideration his whole-person evidence. Appeal Brief at 1. In his arguments, he highlights his “impeccable character” and notes he has no other financial problems. Id. The Judge’s findings and conclusions essentially addressed the matters that Applicant is raising on appeal. Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence and are not enough to show that the Judge’s analysis or conclusions were arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 19-02108.a1

DATE: 10/21/2020

DATE: October 21, 2020

In Re:)	
)	
-----)	ISCR Case No. 19-02108
)	
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 31, 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 July 16, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Tuider 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, who is in his 50s, is married with two adult children. He has a bachelor’s degree. He served in the U.S. military for 30 years, including a combat tour in Iraq, and was honorably discharged. Since then, he has worked for defense contractors. He has held a security clearance for many years.

The SOR alleged that Applicant had one delinquent debt, *i.e.*, a second mortgage past-due for about \$42,700 with a total balance of over \$132,000. This debt arose from a home Applicant purchased for about \$587,000 with two adjustable rate mortgages in the mid-2000s. After the housing market collapse in 2008, the market value of the home was less than the balance of the outstanding mortgages. By 2013, Applicant’s equity in the home rebounded somewhat but not to the point that he could refinance or sell it.

In 2013, Applicant purchased a second home for about \$500,000 with a fixed mortgage. He planned to rent the first home until it regained sufficient equity so that he could sell it. However, he was unable to sustain ownership of the first home due to increases in the adjustable rate mortgages. He worked with a realtor and original lender to sell it through a short sale. After those efforts were unsuccessful, the original lender eventually sold the two mortgages to separate lenders in 2016 and 2017. The new first-mortgage holder rejected three short sale offers, foreclosed on the home, sold it at a trustee sale, forgave the debt on the first mortgage, and issued Applicant an IRS Form 1099A, Acquisition or Abandonment of Secured Property.

The new second-mortgage holder has not forgiven that debt and continues to pursue collection efforts. In responding to the SOR, Applicant indicated he was in the process of hiring a real estate lawyer to assist him in addressing this debt. He has continued to communicate with the second-mortgage holder who charged off the debt, which terminated the accrual of additional interest or late fees. In February 2020, this mortgage holder offered to settle the outstanding balance of about \$135,000 for about \$20,300. Applicant had concerns about the offer and wanted to obtain legal advice to understand his options. At the time of the hearing in late February 2020, he had not

consulted with counsel but indicated he still intended to do so. He stated that, if the second mortgage was determined to be a valid debt, he was in a position to resolve it.

At the hearing, the Judge advised Applicant that he had not mitigated the security concerns arising from this debt. The record of the proceeding was left open for a month for Applicant to submit additional matters. The day before the record was scheduled to close, Applicant submitted an email indicating he consulted with an attorney who advised he was unable to help him. Applicant also indicated the second-mortgage holder was now willing to settle the debt for \$13,520, but he informed the lender that amount was still too high. The Judge responded by offering to leave the record open for another month. Applicant accepted the Judge's offer to leave the record open but did not submit anything further.

Applicant submitted character evidence showing he is top-level performer. He also stated that he has always taken his responsibility to safeguard classified information very seriously, and he would never do anything to jeopardize such information or national security.

None of the mitigating conditions fully apply. Applicant's service and loyalty to the United States are not at issue in this case. The Judge noted that Applicant's distinguished career in the military and with defense contractors "would normally tilt the scale in his favor on a close case." Decision at 9. After first noting that Applicant's problems with the second mortgage can be traced back to the housing market collapse in 2008 and that he has made several attempts to resolve this debt, the Judge concluded Applicant has been unable or unwilling to reach a settlement of that debt despite his assurance that he had the means to resolve it. The Judge found against Applicant on the alleged debt.

Discussion

Applicant contends that the Judge's decision is flawed because it places undue weight on "the onetime occurrence of a financial debt due to a home foreclosure, as a direct result of the 2008 housing market collapse[,] and it did not fully take into consideration his whole-person evidence. Appeal Brief at 1. In his arguments, he highlights his "impeccable character" and notes he has no other financial problems. *Id.* The Judge's findings and conclusions essentially addressed the matters that Applicant is raising on appeal. Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence and are not enough to show that the Judge's analysis or conclusions were arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 18-02239 at 3 (App. Bd. Jul. 20, 2020).

In his brief, Applicant also argues the investigating officer who conducted his background interview indicated he did not pose a threat to national security. The investigating officer's comments, however, summarize Applicant's answers during the interview. They do not constitute the investigating officer's considered opinion as to Applicant's worthiness for a clearance. In any event, even if an investigator provided such an opinion, it would not bind the DoD in its evaluation of an applicant's case. *See, e.g.,* ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015).

Applicant has failed to establish that 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 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