

KEYWORD: Guideline F

DIGEST: The Judge has to weigh the evidence as whole and decide whether the favorable evidence outweighs the unfavorable evidence or vice versa. Adverse decision affirmed.

CASENO: 14-03875.a1

DATE: 10/09/2015

DATE: October 9, 2015

In Re:)
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-----) ISCR Case No. 14-03875
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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 October 13, 2014, 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 27, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Claude R. Heiny denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge found: Applicant is 49 years old. On a 2014 security clearance application, Applicant listed 12 delinquent accounts totaling more than \$22,000. Approximately half of the debt was the result of the repossession of an automobile. Applicant’s second marriage ended in divorce in 2011. He provided no documentation or testimony as to how his finances were affected by his separation and divorce other than to say that a small debt for television service was the responsibility of his ex-wife. In 2007, Applicant had surgery, after which complications caused him to miss 10 days of work for which he was not paid. The loss of income started his financial problems.

At the hearing, Applicant did not deny the fact that he has made poor judgments as far as his finances are concerned. During an investigative interview, he indicated it was bad judgment to acquire his delinquent debt, and that the debt is his responsibility. He also stated that he did not try to work with his creditors to resolve his delinquent debts. He did not take calls from his creditors, but received voice messages from collection agencies. He never returned any calls to collection agencies. Currently, he has paid one \$50 debt but has no plans to pay any of the delinquent debts because he does not have the means to do so. His monthly income is about \$440 greater than monthly obligations, which include such things as vehicle payments and vehicle repairs for himself and his son, telephone bills for himself and other family members, tuition and support for his son, rent and utilities. The \$440 left over goes for food and all other monthly expenses.

The Judge concluded: Applicant’s delinquent debts and financial difficulties are both recent and multiple. He meets none of the mitigating factors for financial considerations. He has not made a good-faith effort to satisfy his debts. He has no plans to pay his delinquent debts and has chosen to simply “walk away” from the debts. He has not made any recent payment on his delinquent debts, nor has he had recent contact with the majority of his creditors. There is little evidence that he was substantially affected by circumstances beyond his control. His surgery resulted in being unpaid for ten days. He failed to establish a financial impact of his separation and divorce. He has not acted responsibly in addressing his debts. He has not demonstrated that his financial problems are under control, or that he has a plan to bring them under control. Applicant has few financial resources available to address his past-due obligations. A clearance at this time is not warranted.

Applicant argues that the facts in his case mitigate the Government’s concerns and that under the whole-person concept, the Judge should have rendered a favorable decision. Applicant fails to establish error on the part of the Judge. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-

25157at 2 (App. Bd. Apr. 4, 2008). As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). The Judge acknowledged the factors of Applicant’s divorce and his surgery and subsequent illness as contributing factors to the onset of Applicant’s financial difficulties. However, the Judge also noted that, although he is current on his most recent obligations, Applicant “walked away” from his sizable old delinquent debt and he currently possesses neither the desire nor the means to resolve that debt.

The Board does not review a case *de novo*. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). “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). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board