

KEYWORD: Guideline F

DIGEST: The Directive presumes a nexus between proven conduct under any Guideline and an applicant's security worthiness. A Judge is presumed to have considered all of the record evidence. Hearing Office decision are not binding legal precedent. Adverse decision affirmed.

CASE NO: 10-09511.a1

DATE: 11/17/2011

DATE: November 17, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-09511
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 13, 2011, DOHA 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 decision on the written record. On September 21, 2011, after considering the record, Administrative Judge Robert J. Tuidor 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 there is a nexus between Applicant's circumstances and a risk to the national security and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the decision.

Applicant disclosed substantial adverse information in his April 2010 security clearance application including: (1) he filed bankruptcy; (2) he had possessions or property repossessed or foreclosed; (3) he had failed to pay federal, state, or other taxes; (4) a lien had been placed against his property for failing to pay taxes or other debts; (5) he had defaulted on a loan; (6) he had bills or debts turned over to a collection agency; (7) he had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and (8) he had been over 180 days delinquent on debts.

In July 2010, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. During the interview, Applicant attributed his financial problems in large part to a failed trucking business that he owned from 2003 to 2009. In late 2007, his two largest customers went out of business, and he also began losing customers to larger trucking companies. He used his personal credit cards to keep his business afloat. Applicant failed to pay income taxes, using the money to make payroll instead. At the time he closed his business down, he estimated that he was approximately \$250,000 in debt. Applicant stated during his July 2010 interview that he intends to pay all of his debts from his salary. He expects to earn \$700 per day with minimal expenses. He estimated that his debt at the time of the July 2010 interview was \$200,000. Applicant predicted that he would be able to pay off all of his debt in two years if employed by his sponsoring employer.

Applicant's SOR is broken down into two parts. The first part alleges 11 separate delinquent debts totaling approximately \$134,508. The second part alleges 35 separate delinquent debts that were included in Applicant's Chapter 13 bankruptcy filed in September 2008. The total amount of these additional 35 debts totals approximately \$328,690. Applicant's September 2008 bankruptcy was dismissed in May 2009 for failure to make payments as agreed.

Applicant's numerous debts include four separate delinquent debts owed to the Internal Revenue Service (IRS), totaling \$188,741, as well as an additional \$27,334 owed to his state tax authority. Applicant explained that his decision to "delay" payment of taxes was the only reasonable choice he had at the time. He added that by delaying payment of his taxes, he was able to meet payroll and keep his business afloat, at least for a while. His bankruptcy petition lists \$237,190 in liabilities.

Applicant's SOR Answer and his Response to the FORM contain lengthy explanations of the origin of his business-related and personal debts. He states that he will be able to begin or resume payment on these debts once his employment stabilizes. Applicant states that he has been able to pay off five debts, two of which were alleged in the SOR. Applicant did provide documentation in his Answer to the SOR that he had paid some of his creditors; however, it is difficult to determine with certainty from the documents in the FORM which SOR debts, if any, have been paid or addressed. The venue precludes an administrative judge from going outside the four corners of the documents contained in the FORM.

In the Analysis, the Judge concluded that Applicant had failed to demonstrate responsible action with regard to his debts. He concluded that Applicant's indebtedness was sizable and ongoing. Accordingly, he concluded that Applicant had not mitigated the security concerns raised by the SOR.

On appeal, Applicant argues that his financial situation does not demonstrate that it is improper for him to have a security clearance. The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. Security clearance determinations are not limited to consideration of work performance or conduct during duty hours. The absence of security violations does not bar or preclude an adverse security clearance decision. *See, e.g.*, ISCR Case No. 09-00505 at 2 (App. Bd. Jan. 26, 2010). The federal government need not wait until an applicant actually mishandles or fails to safeguard classified information before it can deny or revoke access to such information. *See Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969). Furthermore, direct or objective evidence of nexus is not required. *See e.g.*, ISCR Case No. 07-16765 at 2 (App. Bd. Jan. 28, 2009).

Applicant discusses his interpretation of the record evidence. However, the brief is not sufficient to demonstrate that the Judge mis-weighed Applicant's testimony on these matters, nor is it sufficient to undermine the Judge's finding that there was little or no corroboration for Applicant's claims. A Judge is presumed to have considered all of the record evidence. Applicant has not rebutted this presumption, nor has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 09-06691 at 3-4 (App. Bd. May 16, 2011). Furthermore, a party's disagreement with the Judge's weighing of the record evidence or an ability to argue for an alternative interpretation of the record evidence is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 08-08944 at 2 (App. Bd. Nov. 3, 2009).

Applicant's cites to Hearing Office decisions he contends are similar to his case. While decisions by Hearing Office Judges in other cases may be cited as persuasive authority, those cases are not binding legal precedent which a Hearing Office Judge must follow in another situation. Applicant's reliance on other Hearing Office decisions does not demonstrate that the Judge erred in this case. *See, e.g.*, ISCR Case No. 08-03845 at 2 (App. Bd. Feb. 24, 2009).

The record supports a conclusion 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 Judge's adverse 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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board