

KEYWORD: Guideline F; Guideline J

DIGEST: The Judge concluded that Applicant had presented no evidence of a changed lifestyle. He also concluded that the only evidence Applicant presented of an effort to resolve his debts was his bankruptcy, which did not appear to cover most of the allegations in the SOR. He also concluded that, regarding his DUI offenses, Applicant had not demonstrated rehabilitation or that he understood the significance of his actions. These conclusions are supported by the record. Adverse decision affirmed.

CASENO: 11-13180.a1

DATE: 08/21/2013

DATE: August 21, 2013

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In Re:)	
-----)	ISCR Case No. 11-13180
)	
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 January 14, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline J

(Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 18, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge found that Applicant has worked for a Defense contractor since 2006. He left a previous job due to differences with his supervisor. The new job entailed less pay. Applicant's personal financial statement shows a net monthly remainder of \$544.

Applicant has numerous delinquent debts for various expenses, including a foreclosed home and medical expenses. Applicant filed for Chapter 13 bankruptcy protection in May 1, 2008. His filing documents listed an automobile loan, a home mortgage debt, and two open accounts. He did not provide any information to identify which SOR debts were included in the bankruptcy, although three of the SOR debts corresponded with debts listed in the bankruptcy petition. Applicant filed the petition after having experienced a large cut in pay due to his having been fired from a previous job. He has been making his payments to the bankruptcy trustee and expects that his plan will be completed in May 2013. In a clearance interview, Applicant stated that he was familiar only with debts listed in the bankruptcy petition and had no knowledge of other debts uncovered during the course of the investigation. He presented no information to show that his other SOR debts had been resolved.

Applicant was arrested for DUI in 2008. The case was eventually dismissed. He was arrested for DUI again on a military installation in December 2010. He pled guilty and was sentenced to a fine, one year probation, and a driver's license suspension. He completed an alcohol awareness program.

Applicant violated his probation when he was arrested in June 2011 for an outstanding warrant for a traffic ticket, which he subsequently paid. He also stated in an answer to a DOHA interrogatory that he had been arrested again for DUI in July 2011, resulting in an extension of his probation. The Judge noted discrepancies concerning the evidence about Applicant's DUI offenses. Initially, Applicant advised that he had been arrested only once, in 2010. He later admitted the 2008 arrest. Based on these admissions and interrogatory answers, the Judge concluded that Applicant had been arrested three times for DUI.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under both Guidelines alleged. He noted that Applicant has been employed for five years. Although he had a reduction in pay due to having lost a previous job, the Judge stated that Applicant had presented no evidence of changed lifestyle, etc. The Judge stated that the only evidence Applicant presented of an effort

to resolve his debts was his bankruptcy, which did not appear to cover most of the allegations in the SOR. The Judge concluded that Applicant's debts were current and unresolved and that Applicant had not demonstrated a track record of debt resolution.

Regarding Guideline J, the Judge concluded that Applicant's security significant misconduct evidences a repeated course of failing to follow rules and regulations. He found no evidence of rehabilitation or that Applicant understood the significance of his actions. In the whole-person analysis, the Judge concluded that Applicant's ongoing financial problems and his continued criminal actions evidence lack of concern and responsibility.

Discussion

Applicant cites to his evidence concerning his diminution of income following his job loss. He cites to his bankruptcy petition as demonstrating responsible action in regard to his debts. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10758 at 2 (App. Bd. May 21, 2013). The Judge discussed the matters which Applicant has raised in his Appeal Brief, reasonably explaining his conclusion that Applicant had not mitigated the security concerns in his case. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Applicant has submitted new evidence on appeal, purporting to show that several other debts have been resolved. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See* ISCR Case No. 11-08981 at 2 (App. Bd. Apr. 11, 2013).

Applicant challenges the Judge's finding that he had been arrested a third time for DUI. We have considered the Judge's discussion of this finding in light of the record and conclude that it is sustainable. Even if the Judge had not made that finding, however, there is no reason to believe that his overall decision would have been different. The Judge's material findings of security concern are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 11-10633 at 3 (App. Bd. Mar. 21, 2013). Applicant states that his loss of a clearance is having a harmful effect on his finances. The adverse impact of an unfavorable decision is not relevant in evaluating clearance eligibility. *See, e.g.*, ISCR Case No. 11-10758, *supra*.

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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