

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. Applicant’s circumstances were sufficient to raise Guideline E concerns about his judgment and reliability. Adverse decision affirmed.

CASE NO: 11-14899.a1

DATE: 04/15/2015

DATE: April 15, 2015

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In Re:)	
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-----)	ISCR Case No. 11-14899
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 16, 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). On October 31, 2014, DoD amended the SOR to add allegations under Guideline E (Personal Conduct). Applicant requested a hearing. On January 29, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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

An employee of a Defense contractor, Applicant has held a security clearance since 2003. He served for over two years in the U.S. military but was administratively discharged in 2003 for "a pattern of misconduct," receiving a General Discharge Under Honorable Conditions. Decision at 2. The offenses that formed the basis of the discharge were failure to go to his appointed place of duty, dereliction of duty, and disobedience. In addition, Applicant had been accused of computer tampering and hacking, although this was not included in the discharge action.

Applicant married in December 2002 and divorced three years later. He and his wife had a son. Applicant remarried in 2013 and has a son by his current wife. He has a son from another relationship as well. He has four delinquent debts, for cell phone services, child support (two allegations), and a car loan. Applicant has considered debt consolidation, but he has not sought or received financial counseling.

Between May 2004 and December 2013, Applicant was arrested or cited for numerous offenses. These included several traffic offenses, such as speeding, failure to obey a signal, etc. He also had a DUI. The last offense alleged in the SOR, failure to obey a highway sign, resulted in two years of unsupervised probation. In addition, in August 2014, Applicant was cited for failing to come to a complete stop at a stop sign. This was not alleged in the SOR, but the Judge stated that he was considering this offense as bearing on mitigation, rehabilitation, and the whole-person analysis, etc.

The Judge's Analysis

The Judge concluded that Applicant had not mitigated the Guideline F concerns in his case. He stated that they were numerous, recent, and were not incurred under circumstances making them unlikely to recur. Although noting Applicant's divorce and unemployment, the Judge found that Applicant had not acted responsibly. He noted that the child support was being paid through garnishment. The Judge concluded that Applicant had not demonstrated a good-faith effort to pay his debts. Regarding Guideline E, the Judge cleared Applicant of some of the allegations. For example, he found that omissions from Applicant's clearance application and interrogatory response were not deliberate. However, he concluded that the adverse action during Applicant's military career, his DUI, and his several traffic offenses constituted a "long chain of incidents reflecting Applicant's unwillingness to follow rules." *Id.* at 10. In the whole-person analysis, the Judge noted that Applicant's August 2014 traffic offense occurred while he was on probation for the one committed in December 2013.

Discussion

Applicant cites to his having been paying child support and to evidence that he has paid other accounts, as referenced in his clearance interview. He also cites to evidence about his family circumstances and his unemployment. He argues that he has mitigated the concerns arising from his financial delinquencies. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record or to show that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-09118 at 3 (App. Bd. Mar. 25, 2015). He also challenges the Judge's description of his Guideline E infractions as a "chain of incidents." Appeal Brief at 3. He noted a gap of several years that separated his most recent alleged infraction from the one preceding it, arguing that the incidents are not frequent, contrary to the Judge's finding. We construe this as contending that the incidents cited under Guideline E do not raise security concerns. However, Applicant's discharge for cause from the military, his DUI, his various traffic offenses, and the probationary status resulting from his December 2013 traffic incident are sufficient to raise questions in a reasonable mind about Applicant's judgment and reliability. *See* Directive, Enclosure 2 ¶ 15. Accordingly, we find no reason to disturb the Judge's conclusion on this matter. Neither do we find a reason to question the Judge's treatment of the Guideline E mitigating conditions, especially in light of his subsequent offense while on probation.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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 Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge
Member, Appeal Board