

KEYWORD: Guideline F

DIGEST: Applicant was not denied an opportunity to present evidence, nor was he denied any other aspect of due process afforded by the Directive. Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. A different interpretation of the evidence is not enough to show that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 12-02596.a1

DATE: 03/12/2015

DATE: March 12, 2015

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Geoffrey C. Hengerer, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 4, 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 December 10, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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 the Judge denied Applicant due process and 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**

Applicant has worked for a Defense contractor since 2010. He has been continuously employed since 2004. He has a Master's Degree and has held a security clearance since 2004 with no security incidents.

Applicant bought a house in 2004 for \$252,000 with a 30-year, fixed-rate mortgage. He refinanced in 2008 for a total amount of \$360,000. He financed with a variable first mortgage of \$252,000 and a home equity line of credit for \$112,000 for the second mortgage. He did not withdraw cash from the refinance to use for another purpose. He initially testified that he intended to sell it "at the top of the market." Decision at 3. Later, however, he testified that he did not know why he refinanced the house. His total monthly payments increased, and then, in 2008, the real estate market crashed. This, plus a loss of income due to a pay cut, caused him to sell the house.

He engaged in a short sale, resulting in a satisfaction of the first mortgage and a payment of \$2,000 to the creditor of the home equity loan. This creditor would not forgive the remainder of the debt. Applicant claimed that he had approached the creditor about a payment plan, but he did not corroborate this claim. He stated that the creditor told him that the account was charged-off and that he owed nothing. After receiving the SOR, he got in touch with the creditor, who sent a letter stating that the account was closed. The letter stated that "this account is uncollectible and closed with a zero balance as of 4/18/2013." *Id.* at 4.

Applicant has never had financial counseling. A credit report submitted by Applicant has two missing pages that, apparently, identify collection accounts. The Judge stated that it is not possible to determine if these are the same accounts as ones listed in Government reports.

Applicant enjoys a good reputation for the quality of his work. He provided a letter from an employee of another Government agency attesting to his contributions to mission accomplishment.

### **The Judge's Analysis**

The Judge stated that it was not obvious why Applicant refinanced his home, since most people do that in order to reduce their interest rate or to convert equity to cash, and Applicant's venture did neither. He concluded that Applicant's inability to explain why he refinanced under such terms impaired his credibility and raised doubts about his reliability and judgment. Noting evidence of circumstances outside Applicant's control that affected his financial problems, such as the crash of the real estate market, the Judge stated that Applicant was entitled to some credit for having engaged in a short sale of his home. However, the Judge also noted that Applicant did not corroborate his testimony about having negotiated with the creditor of the equity line of credit. He also cited to evidence that the creditor had charged off the debt and that it was not collectible. The

Judge was not able to conclude that Applicant had made a good faith effort to pay the debt rather than merely rely on evidence that the creditor may have given up on collecting it.

In the whole-person analysis, the Judge noted Applicant's educational attainments, his clean security record, and his good work performance. However, he also noted Applicant's inability clearly to explain why he refinanced his house under terms that were not favorable to him. He stated that Applicant had not provided sufficient evidence to show that the home equity loan had actually been resolved in his favor.

## **Discussion**

Applicant argues that the Judge cut him off during his testimony, denying him an opportunity to present the full measure of his favorable evidence. We have examined the portion of the transcript that Applicant cites. The Judge gave Applicant an opportunity to provide additional testimony, but he characterized Applicant's comments as argument, to be reserved until the end of the hearing. We find nothing in this to persuade a reasonable person that the Judge denied Applicant an opportunity to present evidence in mitigation.<sup>1</sup> In any event, Applicant has not cited to any evidence that he would have presented but for the Judge's alleged curtailment of his testimony. Therefore, his argument fails for lack of specificity. *See, e.g.*, ISCR Case No. 14-00281 at 3 (App. Bd. Dec. 30, 2014). An examination of the entire transcript discloses no reason to believe that Applicant was denied the due process afforded him by the Directive.

Applicant contends that the Judge did not properly evaluate the mitigating conditions. He argues, among other things, that he has done all that he can to resolve his financial problems in light of his entire circumstances. He states that the Judge has not identified anything else he could have done to satisfy the delinquent home equity loan. Although debt resolution is a factor to be considered in evaluating an applicant's financial condition, a Judge may legitimately evaluate other things, such as the circumstances underlying a debt that impugn an applicant's judgment. *See, e.g.*, ISCR Case No. 10-06975 at 2 (App. Bd. Apr. 9, 2012). In this case, Applicant's inability to provide a cogent reason for his having refinanced under such apparently unfavorable terms was evidence of this sort. In addition, evidence that the debt has become legally uncollectible does not in and of itself show that Applicant resolved it in a manner that would mitigate the concerns raised in the SOR. *See, e.g.*, ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011). Therefore, the record does not support Applicant's argument that he has clearly done all that he could have to satisfy the delinquency at issue in this case.

Applicant's citation to favorable evidence is not sufficient to show that the Judge failed to consider all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). Applicant's brief, in essence, argues for a different interpretation of the evidence, which is

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<sup>1</sup> “[Judge]: Sir, do you have any additional testimony you wish to provide, perhaps in response to [Department Counsel’s] questions , or perhaps in . . . another area? It’s up to you. Testimony. Not a closing statement. Testimony. [Applicant]: Yes. I think that the inquiry in to my financial business—let me start over. I am financially sound. I take care of my family. [Judge]: Okay. That’s a closing statement. [Applicant]: Okay.” Tr. at 33.

not sufficient to demonstrate the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014).

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

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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