

KEYWORD: Guideline F

DIGEST: The gravamen of the judge's analysis was that Applicant's lack of awareness of debt problems raised questions about his security worthiness. Adverse decision affirmed.

CASENO: 13-00786.a1

DATE: 03/28/2014

DATE: March 28, 2014

In Re:)	
)	
-----)	ISCR Case No. 13-00786
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Nicole A. Smith, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 7, 2013, 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.¹ On January 7, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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

Applicant is an employee of a Defense contractor. He served in the military from 1974 until 1988 and has held a security clearance since 1970.

Applicant's wife handles the couple's financial affairs. She began a real estate business, acquiring properties from year to year. Applicant was not aware of the details of her real estate transactions. He was not aware of the delinquent debts alleged in the SOR until his security clearance interview. He obtained the services of a credit restoration company and has contacted a real estate attorney to assist in resolving issues regarding the investment properties.

The SOR alleged six debts, and the Judge resolved four of them in Applicant's favor. The two that she found against Applicant are both delinquent debts of \$99,000, pertaining to real estate. One was for a second mortgage on an investment property. Applicant learned that his wife would often use a second mortgage in purchasing investment properties and that she used a power of attorney to sign on his behalf as guarantor of the loans. Applicant did not personally sign for any loans.

Applicant's wife's investment team included her sister and brothers. They bought houses, "flipping" them when the market was doing well. When Applicant learned about the delinquent second mortgage, he looked into the matter and discovered that the house had gone into foreclosure in 2009. He did not corroborate his claim that the foreclosure sale resolved this debt.

The other adverse finding pertained to Applicant's personal residence. In 2011, due to his wife's real estate investments, the couple was late regarding six payments.² However, he stated that the payments were eventually made. The property was sold in 2012, although the record is not clear as to the extent that the debt was resolved. Applicant is attempting to have it removed from his credit report, and he admits that he did not receive a release from the lender.

The Judge's Analysis

¹Decision at 1.

²Applicant testified that these missed payments began in early 2011. He stated that he did not learn about them until later in that year. Tr. at 130.

In concluding that Applicant had not mitigated the concerns arising from the two delinquent mortgage debts, the Judge cited to evidence that she believed illustrated Applicant's poor judgment and lack of responsibility. She stated that Applicant's wife had used his name to secure loans without Applicant's knowledge. She concluded that, upon learning the true nature of his financial situation, Applicant did not act responsibly and that he did not question or investigate the status of her other investments. Overall, Applicant's conduct showed a lack of vigilance after he had been placed on notice that his home mortgage had not been paid on time. In the whole-person analysis, the Judge again referred to Applicant's failure to inquire of his wife about the true state of their finances even after having been put on notice in 2011 that she had missed several payments on their home mortgage. She noted evidence that Applicant finally learned about his financial situation in 2013, after which he became proactive regarding his debts. She noted a paucity of corroborating evidence concerning the resolution of the two mortgage debts and stated that she had lingering doubts about Applicant's judgment and reliability.

Discussion

Applicant challenges the Judge's application of the mitigating conditions. Among other things, he contends that his failure to inquire of his wife about their finances did not evidence a lack of judgment on his part, insofar as she had handled their finances for many years without problems and that even if he had done so, in 2011, it would not have made any difference as to the amount of their delinquent debts. He also cites to evidence that he resolved most of the debts alleged in the SOR and has hired a credit restoration company. We have considered Applicant's brief in light of the entire record.

The concern under Guideline F includes the following:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Directive, Enclosure 2 ¶ 18.

The gravamen of the Judge's analysis was that Applicant's lack of awareness of his significant debt problems, some of which were caused by his wife's use of his name as a guarantor of certain loans, raised substantial questions about his security worthiness. The Judge also relied on evidence that Applicant still had significant debt that had not been resolved, having failed to establish that he no longer owed the debts or that he had a clear basis for disputing them.

Evidence that Applicant never looked at a credit report, never inquired about the possible impact of his wife's business practices on their finances even after learning of the delinquent mortgage payments for their residence, and did not know anything about numerous delinquent debts in his own name until confronted with them by a clearance investigator are sufficient to prompt scepticism in a reasonable mind about Applicant's attention to detail regarding important matters. Inattention of the scope evidenced in this record provides a reason to question Applicant's judgment

and ability to protect classified information.³ Applicant has provided an alternative interpretation of the evidence, but that is not enough to show that the Judge’s decision was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-04780 at 4 (App. Bd. Nov. 13, 2013).

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

³*See, e.g.*, ISCR Case No. 11-13626 at 3 (App. Bd. Nov. 7, 2013). “In the whole-person analysis, the Judge cited to [the applicant’s] evidence that he had permitted his wife to handle the finances, resulting in his being unaware of the problems at issue in this case. The Judge stated that the evidence demonstrated a level of inattention to debt obligations that was not consistent with the judgment expected of someone who holds a clearance.”