

KEYWORD: Guideline F

DIGEST: The Judge's challenged credibility determination is sustainable given Applicant's failure to disclose judgements against him after he had attended court hearings related to them. Adverse decision affirmed.

CASENO: 14-01386.a1

DATE: 05/20/2015

DATE: May 20, 2015

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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**

Sean M. Bigley, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 27, 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 March 11, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 erred in his credibility determination 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 served in the U.S. military from 1992 until 2001. Since leaving active duty he has worked continuously as a Federal contractor. Applicant has held a clearance since 2002.

Applicant has several delinquent debts. He failed to file his Federal tax returns and to pay his taxes for tax years 2008 through 2010. Applicant claims that he filed the returns but that the IRS never received them. In 2010 the IRS sent him notices about his 2008 and 2009 tax delinquencies. In 2012 it sent him notices about his 2010 delinquency. In early 2013, the IRS sent Applicant a final collection notice with intent to levy. One month later Applicant filed his Federal tax returns for 2008 through 2010. The IRS has a lien against Applicant for \$135,000 for 2008 and 2009 and another for \$2,500 for 2010. Applicant entered into an installment agreement, and his balance is down to about \$3,000.

Applicant also failed to file and pay his state tax returns for 2008 through 2010. This debt has been extinguished through garnishment. Applicant's state tax problems were not alleged in the SOR. The Judge stated that he was considering them for their bearing on Applicant's credibility, his case for mitigation, and for the whole-person analysis. Decision at 2, note 3.

In 2007, Applicant took out a second mortgage on his home, investing \$90,000 of the proceeds in a real estate venture. The business did not succeed, and Applicant defaulted on the loan. He owes over \$150,000 and has recently entered into a repayment agreement. Several of Applicant's debts have been reduced to judgments. Some of these were for medical expenses, others were for debts alleged to have been owed to his homeowners association (HOA). He recently contacted the attorney for the HOA in an attempt to resolve them. Applicant testified that he was aware of these judgments; however, he did not list them on his security clearance application. As with the state tax debts, the Judge stated that he was considering Applicant's failure to disclose these judgments for its bearing on his credibility, mitigation case, and for the whole-person analysis. *Id.* at. 3. Applicant resolved other SOR debts after the hearing.

Applicant attributed his financial problems to his having provided help to his extended family members, including five orphaned nieces and nephews. He states that he has received financial counseling and recently started up a new business selling items over the internet.

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

The Judge noted Applicant's contention that his debt problems were of limited duration. However, he stated that Applicant ignored the majority of his debts until creditors undertook enforcement action or until his clearance was jeopardized. The Judge cited to evidence of Applicant's family difficulties. He also cited to Applicant's failed business venture, which the Judge termed "risky." *Id.* at 6. He stated that these matters were undertaken at the expense of other obligations, for example Applicant's duty to pay his taxes. The Judge stated that Applicant had disregarded his taxes and other debts for several years and that some remain unresolved. Though noting that Applicant's problems were affected by circumstances outside his control, the Judge concluded that Applicant had not demonstrated responsible action in response to his debts. He also stated that Applicant did not corroborate his claim to have had financial counseling. In the whole-person analysis, the Judge noted evidence of Applicant's years of service to the Government, both in uniform and as a civilian. He noted Applicant's having held a clearance for many years without issue or concern. He also reiterated that Applicant's debt problems were affected by his family challenges, which was a circumstance beyond his control. However, the Judge stated that Applicant has demonstrated a history of placing his personal obligations over his duty to pay his debts. The Judge also stated that Applicant's testimony was, in some significant regards, lacking in credibility.

### **Discussion**

Applicant challenges the Judge's credibility determination. He argues that his failure to have disclosed some of the judgments against him was reasonable, in that he believed that he did not actually owe the debts. We give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1. *See also* ISCR Case No. 14-00998 at 5 (App. Bd. Mar. 19, 2015). We note the Judge's finding that Applicant attended court hearings leading to the judgments and was aware of them, from which a reasonable person could infer that Applicant knowingly omitted them from his application because he did not want to draw attention to them. Moreover, the Judge's credibility determination was also based on other aspects of Applicant's presentation that the Judge found to be implausible.<sup>1</sup> On the whole, we find no reason to disturb the Judge's credibility determination. In any event, as the Judge himself stated, he considered the omissions, along with Applicant's state tax delinquencies, in evaluating not only Applicant's credibility but his case for mitigation and for the whole-person analysis, which was within his authority. *See* ISCR Case No. 13-00310 at 3 (App. Bd. Aug. 15, 2013).

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<sup>1</sup>Applicant testified as to his belief that his delinquent second mortgage was incorporated into a 2012 refinancing arrangement for his home. The Judge concluded that this testimony lacked plausibility, in light of Applicant's experience in the real estate business. He stated that incorporating such a large debt in a new mortgage "would have made a noticeable difference regarding the terms of any new home loan." Decision at 6, note 9. The Judge noted that Applicant waited until after the issuance of the SOR to enter into a repayment plan for the delinquent second mortgage.

Applicant contends that the Judge did not properly apply the whole-person concept, arguing that the Judge did not extend appropriate weight to Applicant's evidence about his family circumstances. He also argues that the Judge's characterization of his business venture as "risky" was not based on the record but, rather, on the Judge's personal views of acceptable risk. Concerning the business venture, the Judge's findings that Applicant invested the proceeds from a second mortgage in a venture that failed, resulting in a \$150,000 delinquency that remained unresolved as of the close of the record supports his analysis of this matter. The Judge gave Applicant credit for circumstances outside his control. However, given the extent to which Applicant's financial problems remained unresolved, the Judge's conclusion that Applicant had not demonstrated responsible action is supportable. Applicant's argument on appeal is, in essence, an alternative interpretation of the evidence, which is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-11920 at 3 (App. Bd. Nov. 24, 2014). We conclude that the Judge made "a fair and impartial common sense determination based upon consideration of all the relevant and material information" in the record. Directive ¶ 6.3. Accordingly, we find no reason to conclude that the Judge's whole-person analysis contravened the requirements of the Directive. *See, e.g.*, ISCR Case No. 13-01328 at 3 (App. Bd. Sep. 17, 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 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