KEYWORD: Guideline F

DIGEST: We do read Judges' sentences in isolation but in light of the record as a whole. Adverse decision affirmed.

CASENO: 14-01798.a1

DATE: 06/18/2015

DATE: June 18, 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
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 26, 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 April 15, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., 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's findings of fact contained errors 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 for 23 years, retiring in 2012. She separated from her husband a year ago, and she is the primary financial resource for the couple's four children, as well as for home maintenance. Applicant's husband earns in excess of $100,000 a year.

In 2007, Applicant and her husband were living in their jointly owned home. A neighbor was having financial trouble, so they tried to help by purchasing his home. Soon after that, the real estate market declined, as did the local job market. The couple relocated to a more costly part of the country. The economic costs of maintaining the second home have been "financially onerous." Decision at 2.

The mortgage on the second home has become delinquent, a problem that was exacerbated by a three-month delay in Applicant's retirement pay and a four-month delay in finding post-military employment. She has sought to refinance the home since 2012, declining an offer by the bank for a deed in lieu of foreclosure for "sentimental reasons." *Id*. She also stated that she was "afraid to do it [because she] didn't know what [she] was getting in to." *Id*. at 3. After foreclosure was entered formally, Applicant submitted a money order for $30,600 in an effort to reinstatement the loan. However, her effort failed, and the loan was transferred to a new lender. She states that she is now open to a deed in lieu of foreclosure.

Applicant's property has been rented for the past four years. The monthly mortgage payment is $2,490, but the renters pay only $1,440, less any repairs they might have incurred. Applicant requested a reinstatement of the loan about a week before the hearing. If it is approved, she hopes that her husband will contribute additional sums needed for the reinstatement. She also hopes for a loan modification. She has not fully researched short-sale as a possible solution. It is difficult to discern which spouse pays for what expenses related to the properties or to other matters. The couple's shared obligations appear to be addressed in an *ad hoc* manner.

The Judge's Analysis

The Judge stated that Applicant has considered a number of options for resolving her mortgage debt but had not settled on a specific plan. He stated that, while she wants to keep the house, she lacks the necessary approval to do so. He stated that there is no evidence that Applicant

had received financial counseling. Although Applicant apparently has enough money to resolve the debt, she has made no sustained progress.

In the whole-person analysis, the Judge stated that, despite her education and experience, Applicant appears to be "muddled as to how she can best proceed with regard to her second home." *Id*. at 6. Reiterating her various attempts to address her debt, the Judge stated that Applicant is pursuing approaches that she has tried before. More to the point, the Judge found that it is not clear why Applicant's loan became delinquent. He observed that her net monthly income should be enough to satisfy the debt. The Judge concluded that, lacking evidence as to the reason for the delinquency or for why Applicant cannot afford the home, the record does not support a favorable conclusion.

Discussion

Applicant challenges some of the Judge's findings of fact. She states that she and her husband were not living in their jointly owned home at the time they purchased the second home. She challenges the Judge's finding that the couple relocated to a more costly region due to a declining job market. Rather, she argues that they relocated because of military orders. She also contends that she did not decline the bank's offer of an alternative to foreclosure; rather, she did not look into it further.

We examine a Judge's findings of fact to see if they are supported by substantial record evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." ISCR Case No. 11-10474 at 3 (App. Bd. Sep. 5, 2014), quoting Directive ¶ E3.1.32.1. Examining the first challenged finding in light of Government Exhibit 1, Security Clearance Application, we conclude that Applicant is correct. This document states that, at the time they purchased the second home, Applicant and her husband were living in rental property in another state. However, even if this error had not occurred, the Judge's decision would most likely have been the same. Therefore, this error is harmless. Otherwise the Judge's material findings of security concern are supported by substantial record evidence or constitute reasonable inferences that could be drawn from the evidence.[1] *See, e.g., Id.* at 5. Applicant has not cited to a harmful error in the Judge's Findings of Fact.

Applicant takes umbrage at the Judge's use of the word "muddled" in characterizing her approach to resolving her financial problem. She states that she is not muddled, that she has many responsibilities that preclude her devoting all of her time to this matter. We do not consider Judges' sentences in isolation but in light of the record as a whole. *See, e.g.*, ISCR Case No. 09-07219 at

[1]"The Applicant: [The] year I purchased that home in 2007 . . . I'm pretty sure it was . . . like the later part of 2007, I think November 2007 . . . I mean, they are in a very good location. But we moved–our plan was to go back there. But we haven't been able. We moved like seven times in ten years. And then we followed the job market, and the job market was up here." Tr. at 15-16. The Judge's finding about Applicant's reasons for moving to a more costly region appears to be based on this testimony. As such, the finding constitutes a reasonable interpretation of Applicant's presentation.

5 (App. Bd. Sep. 27, 2012). We do not read this sentence as impugning Applicant's abilities or character. Rather, the Judge is saying that Applicant appears uncertain as to what course of action to undertake, a conclusion that is consistent with the record that was before him.

Applicant cites to record evidence of her marital difficulties; of her many years of service to the military, having entailed many relocations over the course of her career; and of the difficulty of managing property located far away. She also cites to evidence of her efforts to reinstate the loan and other steps she has taken to resolve the problem. The Judge made findings about the things Applicant has discussed and he discussed much of it in the Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012). In effect, she argues for an alternative interpretation of the record, which is not enough to undermine the manner in which the Judge weighed the record evidence. *See, e.g.*, ISCR Case No. 12-01977 at 2-3 (App. Bd. Dec. 30, 2013).

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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody

Administrative Judge
Member, Appeal Board