

KEYWORD: Guideline; Guideline e

DIGEST: The Judge made findings about Applicant's evidence. Adverse decision affirmed.

CASENO: 14-02387.a1

DATE: 05/07/2015

DATE: May 7, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-02387
)	
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 July 29, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)

(Directive). Department Counsel requested a hearing. On March 2, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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 did not file her Federal income tax return for 2009. In addition, she owes \$11,810 in unpaid Federal taxes for 2008 and 2010. Applicant has other delinquent debts, for mortgage accounts, dental treatment, consumer purchases, etc. When completing her security clearance application (SCA), Applicant did not disclose her delinquent debts, her unpaid taxes, and her failure to file her 2009 return. Applicant made inconsistent statements about her finances. For example, she testified that she knew in 2011 or 2012 that her electronic tax filing for 2009 did not go through. However, she later testified that she did not know about this until after she submitted her SCA. She also testified that her 2008 and 2010 tax debts had been paid and that arrangements had been made to pay the debt for 2009. The Judge found that this testimony was not true, in light of Applicant's own evidence, a document from the IRS. The Judge found that Applicant's presentation was not consistent with the record evidence and was not credible.

Applicant's husband was laid off in 2012, experiencing three months of unemployment. The couple have two adult children, ages 27 and 23, whom they have supported through their college educations and beyond. They are providing full support to the younger. Applicant earns about \$75,000 a year. Her husband earns about \$32,000, plus an additional \$10,000 from a side business. Applicant manages the family finances, though she admits that she does not know how much they have at the end of the month. She stated that they live paycheck to paycheck. Applicant stated that she had a repayment plan with the IRS, although she submitted documentary evidence of payments of only a fraction of her total debt.

The Judge's Analysis

The Judge stated that Applicant's financial problems were ongoing and were not likely to have been significantly affected by her husband's three months of unemployment. He concluded that Applicant had not demonstrated responsible action in regard to her debts, most of her efforts at debt resolution having taken place at or near the date of her hearing. He noted that she has not had financial counseling, nor does she have a plan for resolving all of her debts. Concerning the allegation of falsification under Guideline E, the Judge found that the totality of facts and circumstances support a conclusion that Applicant deliberately omitted pertinent information about her delinquent debts. He found that she had not attempted to correct the omission or established any other of the Guideline E mitigating conditions.

Discussion

Applicant argues that the Judge failed properly to apply the whole-person concept, in that he gave insufficient weight to evidence favorable to her. She cites to her husband’s unemployment, arguing that the Judge erred in his conclusion that it did not likely have a significant impact on her financial condition. She also cites to her having held a clearance for many years with no problems and to her repayment plan with the IRS. The Judge made findings about Applicant’s evidence. However, given the extent and the ongoing nature of her debts, along with the Judge’s adverse credibility determination, we conclude that his overall decision is supported by the record. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record or that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 08-06438 at 2 (App. Bd. Aug. 4, 2009).

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

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