

KEYWORD: Guideline F

DIGEST: A Judge is presumed to be impartial and a party claiming otherwise has a heavy burden of persuasion. The Board has no authority to rule on the wisdom of provisions of the Directive. Adverse decision affirmed.

CASENO: 14-02383.a1

DATE: 07/21/2015

DATE: July 21, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-02383
)	
)	
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 September 16, 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 28, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 was biased against Applicant; whether the Judge’s findings of fact contained errors; whether the Judge erred in concluding that Applicant’s circumstances raised security concerns; whether the Judge failed properly to apply the whole-person factors; 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

Since 2008, Applicant has worked for a Defense contractor. He served in the U.S. military until 2007, when he received a disability retirement. Applicant’s SOR lists five delinquent debts, totaling over \$105,000, including a charged-off home equity line of credit, deficiency judgments from the repossessions of automobiles, and credit card debts. Applicant admits owing the debts alleged in the SOR, further claiming that they will be resolved through Chapter 13 bankruptcy.

Applicant and his wife bought a house in 1998 for about \$123,000, financing the purchase with a mortgage loan. They refinanced several years later and, soon after that, opened a home equity line of credit that was secured by the house. The credit limit was \$87,000, and Applicant spent about \$40,000 on improvements to the house. He used some of the proceeds from the line of credit to pay for his wife’s fertility treatments. His wife had to stop working during her pregnancy, returning to the work force in 2008.

In 2005, Applicant bought a used luxury sport utility vehicle (SUV), the high credit on the auto loan being \$36,180. As stated above, Applicant was discharged from the military in 2007 due to medical problems that rendered him incapable of utilizing the specialized skills he learned while on active duty and which would have enabled him to earn more money. His VA disability pay is currently about \$2,100 a month. Applicant experienced a period of unemployment following his discharge, and, although now employed, he earns less than he did while in the military.

Because of his long commute to work, Applicant traded his SUV for a used luxury car that was more fuel-efficient. The high credit on this auto loan was \$30,411. Applicant’s wife stopped working in 2012 due to medical problems, as well as to commuting costs and child care expenses. Applicant’s income was not sufficient to pay all the family’s bills as well as the mortgage on their home. He attempted to refinance, with no success, and he sought other means of reducing his mortgage payments, including a short sale of his house. An attorney advised him to stop paying his bills and file for bankruptcy. Applicant followed this advice, moving out of his home in December 2012 in anticipation of foreclosure proceedings.

Applicant attempted to sell some of his cars, but the lienholder on one of them would not accept it as a repossession. When advised of Applicant's plan to file for bankruptcy, the lienholder stated that he would not accept the vehicle until Applicant had a bankruptcy case file number. Although Applicant still has this car, he has made no payments on the loan in several years.

Applicant's home went into foreclosure, selling for about \$150,000. He and his wife now rent their living quarters from Applicant's parents-in-law. The couple filed for Chapter 13 bankruptcy in March 2015. The filing reveals \$26,510 in secured claims and over \$275,000 in unsecured non-priority claims. The plan calls for payments of \$360 a month for 60 months. Applicant received financial counseling as part of the bankruptcy process. He states that he will follow through with his bankruptcy plan. His wife has a part-time job and is looking for another one, as is Applicant.

The Judge's Analysis

The Judge acknowledged circumstances outside Applicant's control that affected his financial condition, such as his medical discharge from the military, his subsequent unemployment, and his wife's medical problems. The Judge also noted evidence that Applicant's having declined to pay his bills was upon the advice of an attorney. However, the Judge found that Applicant did not file for bankruptcy for three years, during which time he made no payments on his debts. The Judge concluded that Applicant had not demonstrated a track record of debt resolution, insofar as it is too soon to know if Applicant's plan will even be approved, much less followed. In light of this, the Judge found that Applicant had not demonstrated responsible action in regard to his debts. In the whole-person analysis, the Judge cited to evidence of Applicant's military service. He reiterated his conclusion that it is too soon to tell if Applicant's bankruptcy plan will be successful.

Discussion

Applicant begins his Appeal Brief by stating his belief that the Directive is out of date. He states that if it were to have been updated before his hearing, he would likely have received a clearance. He cites to no favorable evidence that the Directive in its current iteration prevented him from offering to the Judge. In any event, we have no authority to rule on the wisdom of the provisions of the Directive. *See, e.g.*, ISCR Case No. 12-07751 at 3 (App. Bd. Apr. 7, 2015).

Applicant contends that the Judge was biased against him. He stated that the Judge constantly interrupted his presentation and belittled the decisions he made in his effort to regain his financial health. A Judge is presumed to be impartial, and a party claiming otherwise has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 12-07751, *supra*, at 3.

We have examined the transcript and other evidence in the case, along with the Decision itself. While the Judge questioned Applicant frequently during the hearing, sometimes sharply, it appears to have been an effort to clarify the evidence and to challenge aspects of Applicant's

presentation that a reasonable person might find self-serving.¹ We find nothing in the record that would support a conclusion that the Judge evidenced an inflexible predisposition to decide the case adversely to Applicant or that he otherwise divested himself of his impartiality.

Applicant challenges some of the Judge's findings of fact, for example the date of the foreclosure action. We have examined the Judge's findings in light of the record and conclude that they are based upon substantial evidence or constitute reasonable inferences from the evidence. Applicant has not cited to a harmful error in the Judge's findings of fact. *See, e.g.*, ISCR Case No. 14-01607 at 3 (App. Bd. Apr. 9, 2015).

Applicant cites to evidence such as his good security record as well as to the circumstances underlying his financial problems. A Judge is presumed to have considered all of the evidence in the record, and Applicant's appeal brief is not sufficient to rebut that presumption or 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. 12-00723 at 3 (App. Bd. Feb. 4, 2014).

Applicant argues that he will not commit crimes in order to get money for debt resolution. To the extent that he is challenging the Judge's conclusion that his circumstances raised security concerns, we note that Guideline F is not concerned solely with the possibility that an applicant might engage in illegal acts in order to pay his debts. It also requires a Judge to examine the applicant's circumstances for what they may reveal about his self-control, judgment, and willingness to abide by rules and regulations. *See, e.g.*, ISCR Case No. 14-00434 at 2-3 (App. Bd. Jan. 20, 2015). In this case the record supports the Judge's conclusion that Applicant's ongoing financial problems raised security concerns.

Applicant's Appeal Brief contains information from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant challenges the Judge's whole-person analysis. However, we conclude that Applicant's argument merely poses an alternative interpretation of the evidence. The Judge's whole-person analysis complies with the requirements of the Directive, in that he evaluated Applicant's financial problems and mitigation evidence in light of the record as a whole. *See, e.g.*, ISCR Case No. 14-01567 at 2 (App. Bd. Apr. 10, 2015). The Judge's ultimate conclusion that Applicant had not demonstrated a track record of debt resolution was consistent with the record that was before him, in light of the recency of Applicant's bankruptcy filing. *See, e.g.*, ISCR Case No. 14-00714 at 3 (App. Bd. May 27, 2015).

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

¹Referring to the mortgage lender, Applicant stated "they take care of their own and I have to take care of my own. [Judge]: Sure. [Applicant]: So it just came to that. Then it became a little personal because— [Judge]: It became personal? [Applicant]: It became personal because . . . they've got to take care of their business and I've got to take care of my business, that's what I meant . . . [Judge]: You have no basis to be bitter about them. They did everything you asked of them. It's you who did not do what your promised." Tr. at 32-33.

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