

KEYWORD: Guideline F

DIGEST: The Board concludes that any error by the Judge were minor and did not affect the outcome of the case. Adverse decision affirmed.

CASENO: 14-03373.a1

DATE: 05/07/2015

DATE: May 7, 2015

In Re:)
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-----) ISCR Case No. 14-03373
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)
Applicant for Security Clearance)
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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 12, 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 2, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge found: Applicant is 38 years old. He failed to file his federal tax returns for tax years 2006 through 2008 and owes about \$14,000 in federal taxes for those years. In 2010 he began a payment plan with the IRS, paid regularly, and retired the debt in October 2014. Applicant failed to timely file his 2006 State A income tax return and became indebted to the state in the amount of \$6,266 for tax years 2006 and 2007. A State A tax judgment for \$4,588 remains outstanding. Applicant made one payment of \$623 toward this judgment in 2015. State B filed a tax lien against Applicant in 2011 in the amount of \$1,084. \$274 remains outstanding and Applicant has not made any payment arrangements with State B to discharge this debt. Applicant is indebted to a law firm for a judgment of \$13,696, entered in 2012. He has not made any progress in addressing this judgment. Applicant accumulated four consumer debts for an amount exceeding \$1,600. Three of the debts have been paid. He also accrued a delinquent home equity loan for approximately \$55,000. The debt was the result of a foreclosure on his home in 2006. The proceeds of the sale covered a first mortgage but were insufficient to satisfy \$55,000 of the home equity loan. A creditor’s suit was filed in 2013 but its status is unknown. The debt is still outstanding. Applicant and his wife were divorced in 2007. The divorce had a negative impact on Applicant’s finances.

The Judge concluded: Applicant’s debts are attributed to lapses in Judgment in the management of his financial affairs. These lapses were accompanied by extenuating circumstances in the form of a difficult separation and divorce that entailed considerable cost burdens that affected his finances. However, he has not addressed one consumer debt or his State B tax debt. He also has not addressed the large home equity debt. Too many of his debts remain outstanding to support a conclusion that Applicant has acted responsibly regarding debt repayment. Applicant’s corrective actions to date are insufficient to mitigate the Government’s security concerns.

Applicant’s appeal brief contains several representations regarding his finances that go beyond the evidence of record. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant takes issue with two of the Judge’s findings concerning the dollar amounts of indebtedness and payment amounts. After a review of the record and the Judge’s decision, the Board concludes that any errors on the part of the Judge involving amounts are minor in nature, did not influence the central aspects of the Judge’s analysis, and did not affect the outcome of the case.

Applicant argues that he has held a clearance for many years and his debt situation did not affect his ability to properly handle classified information. He states that during his difficulties he never considered selling information. The Judge made extensive findings about the context in which Applicant experienced his financial difficulties. However, given the extent and the ongoing nature of his debts, the Board concludes that the Judge's overall decision is supported by the record. Applicant has not demonstrated that the Judge 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 Board does not review a case *de novo*. The mitigating evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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