

KEYWORD: Guideline F

DIGEST: Reading the Decision as a whole, we find no basis to conclude that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASENO: 14-03688.a1

DATE: 08/18/2015

DATE: August 18, 2015

In Re:)
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 -----) ISCR Case No. 14-03688
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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

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 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 June 4, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, 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 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 works for a Defense contractor, a job he has held since late 2005. He seeks to retain a security clearance.

Applicant’s SOR alleges several delinquent debts, the majority of which are for delinquent, Federally-guaranteed student loans. He has attended three colleges, without obtaining a degree. His attendance at one of them, a technical college, was financed by the student loans that are at issue in this case. Applicant received deferments on repayment until he finished school. Once he did, however, he did not begin repayment. He states that, when the loans became due, he was not making enough to pay. He claims to have had a repayment plan for one of the loans, but was unable to keep up with it. He has had his loans placed in forbearance, which ends in 2015.

In addition to Federally-guaranteed loans, Applicant also took out loans directly from the Federal Government. These also became delinquent, but Applicant has repaid them by borrowing money from his parents. Applicant and his wife currently net about \$8,200 monthly. The Judge found that five of the allegations are repeats of others.

The Judge’s Analysis

In concluding that Applicant had not mitigated the concerns arising from his delinquent student loans, the Judge stated that they were recent and cannot be considered unlikely to recur, insofar as Applicant took no steps to contact the creditors. Noting that much of Applicant’s efforts at addressing his debts occurred after the receipt of the SOR, the Judge concluded that these efforts do not reflect “good-faith” to the extent that would serve to mitigate the concerns arising from the debts. He also stated that there is no reason to believe that Applicant has received financial counseling, nor has he established a track record of debt payment.

Discussion

Applicant cites to record evidence in support of his argument that the Judge’s analysis was flawed. This evidence includes his testimony that he initially did not have the means to repay his debts, his testimony that he had attempted a payment plan before the issuance of the SOR, his steady employment for many years, etc. A Judge is presumed to have considered all of the evidence in the

record. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012). The Judge made findings about the evidence that Applicant has cited. He noted, however, that Applicant’s testimony about the earlier repayment plan was not corroborated. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. The Judge based his decision on evidence that Applicant (1) made no effort to contact the lenders when his finances impaired his ability to pay; (2) failed to maintain regular payments though possessing the means to do so; (3) took no meaningful action on the debts until after he received the SOR; and (4) still has no track record of repayment. The Judge’s conclusion that these factors outweigh any matters in mitigation in sustainable. Reading the Decision in light of the record as a whole, we find no basis to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 13-00786 at 3-4 (App. Bd. Mar. 28, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner. *See, e.g.*, ISCR Case No. 14-00714 at 3 (App. Bd. May 27, 2015). “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: 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