

KEYWORD: Guideline F

DIGEST: Applicant arguments are not sufficient to demonstrate that the Judge failed. To consider all the evidence. Adverse decision affirmed.

CASENO: 14-05908.a1

DATE: 09/02/2015

DATE: September 2, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-05908
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 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 decision on the written record. On June 26, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuider 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 is seeking a clearance in conjunction with his employment by a Defense contractor. His SOR alleges two debts, both resulting from a foreclosure action on an investment property whose purchase was financed by first and second mortgages. Applicant bought a condo in 2005 but was unable to make his monthly payments by mid 2006, due to increased condo fees, his inability to charge enough rent to cover his mortgage payment, and his lack of success in selling the property. Applicant sought a loan modification and a deed of foreclosure, but the lenders did not agree. In 2008, he engaged in a “strategic default.” A lender purchased the condo for \$100 at the foreclosure sale and resold it for \$53,000.

Applicant believes that he paid taxes on the first mortgage deficiency. He asserts that he does not intend to resolve the second deficiency, upon advice of his lawyer. There is no documentation in the record showing that the deficiencies were forgiven or, if they were, whether Applicant paid the taxes owed on them. In the File of Relevant Material (FORM), Department Counsel noted matters that Applicant needed to address with additional evidence or documentation. Applicant submitted no response to the FORM. There is no record of financial counseling.

The Judge’s Analysis

The Judge noted Applicant’s statement that, acting on advice from his lawyer, he was not going to pay the deficiency on the second mortgage due to the statute of limitations. The Judge concluded that Applicant’s knowing decision not to honor his contractual obligations raises concerns that are not allayed simply by evidence that the resulting debt has become uncollectible. The Judge also noted a paucity of evidence of financial counseling or of efforts to address his mortgage problems. The Judge concluded that Applicant had not provided enough evidence to mitigate the concerns arising from his mortgage debts.

Discussion

Applicant argues that the Judge’s analysis of the mitigating conditions was faulty. Among other things, he cites to his explanation that he engaged in a “strategic default” on his mortgage and

declined to pay the deficiency on the second, because he was acting on advice of counsel. The Judge made a finding about this and referenced it in his Analysis. However, the gravamen of his adverse decision was that, despite sufficient notice, Applicant had not provided enough evidence in response to the FORM to answer the security concerns raised by his financial problems. In a DOHA proceeding, the applicant bears the burden of persuasion, and an applicant's failure to submit sufficient evidence in mitigation will generally result in an adverse decision. *See, e.g.*, ISCR Case No. 14-00321 at 3 (App. Bd. Jun. 5, 2015) (Judge's adverse decision based on extent of the applicant's debts and a paucity of mitigating evidence). Applicant's arguments are not enough to show that the Judge failed to consider all of the evidence or that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00597 at 3 (App. Bd. Jul. 16, 2015).¹

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

Signed: James E. Moody

¹Applicant argues that his use of the statute of limitations as a defense against collection efforts should be considered mitigating because it was in his best interest. This argument does not address the security concerns raised by Guideline F. *See* Directive, Enclosure 2 ¶ 18.

James E. Moody
Administrative Judge
Member, Appeal Board