

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 14-05764.a1

DATE: 02/24/2016

DATE: February 24, 2016

In Re:)
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-----) ISCR Case No. 14-05764
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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 January 27, 2015, 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 December 2, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 served in the U.S. military from 2002 until 2012. He has been employed by a Defense contractor since 2014. His SOR lists seven delinquent debts, that had either been charged off or were in collection status. The Judge found that one of the debts, a credit card, has been resolved. However, he found that there was insufficient evidence to show that the remainder had been paid or reduced. Applicant hired a law firm in 2014 to assist him resolving his debts. He has paid them a total of over \$1,000 but, in the week before the hearing, concluded that they were not delivering on their promise of debt resolution. He plans to stop using the firm. However, for several years prior to hiring the firm, applicant made no payments on his overdue debts.

Applicant currently makes about \$65,000 a year. He has over \$5,000 in savings and has a monthly surplus of about \$800. About two weeks prior to the hearing, Applicant took a number of on-line financial classes. A witness testified that he had known Applicant for many years and believed him to be hardworking, trustworthy, and ethical. He submitted a number of documents, both during the hearing and afterward, showing, among other things, his financial education classes, his military discharge, several letters of recommendation, including one from a Brigadier General, and an agreement with a new law firm.

The Judge’s Analysis

The Judge noted evidence that Applicant’s financial problems were affected by a period of unemployment and by education loans that were not deferred during Applicant’s military deployment, but that he had not acted responsibly in regard to his debts.¹ He stated that Applicant took no steps to resolve his debts until 2014, hiring the law firm after he began applying for a clearance. He concluded that Applicant’s dilatory response to addressing his debts precluded favorable application of Mitigating Condition 20(d): “initiated a good-faith effort to resolve his debts.”²

¹Directive, Enclosure 2 ¶ 20(b): “the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances[.]”

²Directive, Enclosure 2 ¶ 20(d).

Discussion

Applicant cites to evidence of his efforts to resolve his debts, such as hiring the law firm and other steps. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Neither has he shown that the Judge mis-weighed the evidence. He cites to Disqualifying Condition (DC) 19(b): “indebtedness caused by frivolous or irresponsible spending[.]”³ He argues that he has not been irresponsible in his spending and that he was not trying to establish a lifestyle that was beyond his means. The Judge did not apply DC 19(b), however. Rather, he found that DC 19(a)⁴ and 19(c)⁵ were raised by Applicant’s circumstances, which was reasonable, based on the record that was before him.

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

³Directive, Enclosure 2 ¶ 19(b).

⁴Directive, Enclosure 2 ¶ 19(a): “inability or unwillingness to satisfy debts[.]”

⁵Directive, Enclosure 2 ¶ 19(c): “a history of not meeting financial obligations[.]”

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