

KEYWORD: Guideline F

DIGEST: Applicant cites to his testimony that he had attempted to resolve the largest medical debt. He also cites to testimony and other evidence concerning debt repayment and his payment of current expenses. The Judge made findings about Applicant's evidence. However, her finding that he had not corroborated his testimony was consistent with the record that was before her. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASENO: 14-06203.a1

DATE: 04/06/2016

DATE: April 6, 2016

In Re:)
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-----) ISCR Case No. 14-06203
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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

Andrew J. McCoy, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 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 January 12, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 erred in concluding that his financial condition raised security concerns and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law.

The Judge’s Findings of Fact

Applicant has worked for his current employer since August 2014. He worked for this company previously from 1979 to 2004 and while doing so held a clearance. Applicant has an ex-wife, whom he divorced in 2002. He had children with her, and one of them lived with him for a couple of years. Applicant received no child support from his ex-wife. He experienced unemployment from August 2012 until May 2013. His finances were affected by a 2008 court order that he cover his youngest child with medical insurance, as well as by a diminution in income due to a loss of overtime and to his second wife’s unemployment. They were also affected by home repairs resulting from a burst water pipe. Applicant’s SOR lists several delinquent debts, for credit cards, medical expenses, etc. The medical bills included one for nearly \$14,000, incurred at a time when he did not have health insurance. He offered to make monthly payments, but the creditor did not accept it. He contends that the initial balance of this debt was about \$3,000 but provided no corroboration. When asked why he had not taken action regarding his older debts, Applicant replied that he did not know why the Government was “sweating me on this many details.” Decision at 5. He stated that he had paid some of the SOR debts but that he did not know if he could corroborate this claim. Applicant stated that he pays his current expenses. When asked why he had been inattentive to his delinquent debts, he replied that he had experienced bad luck. He admitted that he did not have a good grasp on the family finances and that his claim of \$300 in discretionary income was a guess. He currently has health insurance and has no open credit card accounts.

The Judge’s Analysis

The Judge concluded that Applicant’s financial condition raised two disqualifying conditions: 19(a)¹ and (c).² In evaluating Applicant’s case for mitigation, the Judge concluded that he had not shown responsible action in regard to his debts. Concerning the largest medical debt, she noted that Applicant had not corroborated his testimony disputing the amount. She also found the evidence about his willingness to pay other debts, or about his ability to do so, to be conflicting. She

¹Directive, Enclosure 2 ¶ 19(a): “inability or unwillingness to satisfy debts[.]”

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

stated that he had ignored his financial problems even after having been placed on notice that they were of concern to the DoD. She found that his SOR debts were not resolved and that he had provided no evidence of financial counseling. In the whole-person analysis, the Judge cited to evidence of various misfortunes that affected Applicant's financial condition. She stated that without evidence that Applicant has shown progress in addressing his debts, it is premature to grant him eligibility for access to classified information.

Discussion

Applicant cites to evidence about debt payment and resolution. He argues that he is willing to pay debts and does not have a history of failing to do so. The Directive presumes that there is a nexus between proven or admitted conduct or circumstances under the Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). In this case Applicant's response to the SOR admitted three of the SOR debts, including the largest medical debt. In addition, the evidence establishes the factual basis for all of the allegations. Applicant's argument is not enough to rebut the presumption of nexus. Applicant cites to his testimony that he had attempted to resolve the largest medical debt. He also cites to testimony and other evidence concerning debt repayment and his payment of current expenses. The Judge made findings about Applicant's evidence. However, her finding that he had not corroborated his testimony was consistent with the record that was before her. 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). Moreover, the Judge's whole person analysis complies with the requirements of Directive ¶ 6.3, in that she considered the totality of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 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 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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, 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