

KEYWORD: Guideline F

DIGEST: Hearing Office decisions are not binding on the Appeal Board or on other Hearing Office Judges. Judge’s conclusion that Applicant’s circumstances suggested a lack of financial restraint is sustainable. Adverse decision affirmed.

CASE NO: 10-05738.a1

DATE: 06/26/2012

DATE: June 26, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-05738
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 14, 2011, DOHA 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 9, 2012, after the hearing, Administrative Judge Jennifer I. Goldstein 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 security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant served in the U.S. Navy from 1980 until 2003, retiring as a Lieutenant Commander. He held a security clearance in the Navy without incident. He has worked as a Government contractor for the last three years.

Applicant began accruing real estate while he was on active duty. He bought a second home and rented out his first, and then acquired a third property. He also purchased a yacht and lived on it for a period of time. From 2003 until 2007, he acquired seven additional properties, although he did not own them all at the same time. He bought four of them as investments.

In 2007, Applicant had an account with a credit union. This account had a balance of several hundred thousand dollars, which was a cash reserve to be tapped in the event of financial difficulty. He had a line of credit with the same credit union. In late 2007, the credit union transferred the funds in Applicant's account to pay off his line of credit, with the result that Applicant found himself unable to pay all of his mortgage obligations.

He sold five of his rental properties, but as the economy got worse, found himself unable to sell the others. He attempted short sales, but the lender did not accept the offers. Seven or eight of Applicant's properties went into foreclosure.

In January 2010, Applicant filed for Chapter 11 bankruptcy protection. The filing listed \$73,000 in unsecured priority claims, \$544,558 in unsecured non-priority claims, and \$5,905,968 in secured claims. The unsecured priority claims consisted of property tax liabilities. He has submitted a reorganization plan to the bankruptcy court and has completed credit counseling.

Among the debts listed in the bankruptcy filing is Applicant's home, valued at about \$1.5 million but upon which he owed \$3.36 million. The filing also includes the yacht, a private airplane, and three cars, two of them luxury models. He also owes \$193,139 to the Internal Revenue Service for taxes owed from December 2005 to December 2009. Applicant's financial condition includes a number of delinquent debts for utility services, cable services, etc.

Applicant received a number of awards and medals while on active duty. He has received several accolades for the quality of his work performance and service to his country. His and his wife's combined annual income was between \$200,000 and \$250,000.

In the Analysis, the Judge stated that Applicant's financial difficulties were partially the result of the poor economy. However, she also concluded that he bore responsibility himself, in view of what she characterized as "his poor judgement in acquiring an excessive amount of debt." Decision at 9. She stated that, under the circumstances, she could not conclude that Applicant had

acted responsibly in regard to his debts.¹ Although bankruptcy is a legally permissible remedy, she stated that Applicant had not, as of the close of the record, demonstrated a track record of debt repayment. In the whole-person analysis, the Judge credited Applicant for his military service and the respect he enjoys from his colleagues and friends. However, she stated that there is little indication that he will regain financial stability in the near future and that his bankruptcy plan had yet to be approved as of the close of the record. She also concluded that Applicant had not demonstrated the restraint to live within his means. The Judge concluded that the evidence left her with doubts as to Applicant's security worthiness. Accordingly, she denied him a clearance.

Applicant cites to some cases by the Hearing Office, which he contends support his effort to obtain a security clearance. These cases pertain to applicants whose financial problems originated from circumstances beyond their control and whom the Judges concluded had acted responsibly in regard to their debts or had otherwise demonstrated that their finances were under control.² We give due consideration to these cases. However, as Applicant himself notes, Hearing Office cases are not binding on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 08-09236 at 3 (App. Bd. Jun. 15, 2011). The cases which Applicant has cited have significant factual differences from his own. For example, in the one cited in the footnote below, the circumstances of that applicant's debts were qualitatively different from those of Applicant in this case. The cases which Applicant cites do not demonstrate that the Judge's adverse decision was arbitrary, capricious, or contrary to law.

Applicant contends that the Judge erred in her application of the mitigating conditions. He cites to evidence concerning his credit union account having been involuntarily depleted to pay off a line of credit. He states that his financial problems were triggered by this unique event, which is unlikely to recur.³ Although the Judge considered this evidence and made a finding about it, her analysis relied in substantial measure on record evidence of the circumstances of Applicant's massive debt load, his having purchased numerous houses, as well as expensive cars, a boat, an airplane, etc. She stated that Applicant's circumstances suggest a lack of financial restraint. Such a lack of restraint is consistent with a conclusion that Applicant's circumstances cast doubt on his judgement. She also concluded that Applicant's debt problems did not arise fundamentally from causes outside his control. Given the record that was before her, this conclusion is sustainable. Much of Applicant's argument on appeal simply takes issue with the Judge's weighing of the evidence. However, the record as a whole provides no reason to question the manner in which the Judge weighed the evidence.

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."

²*See, e.g.*, ISCR Case No. 10-07196 (App. Bd. Dec. 30, 2011). Applicant cites to a statement in this decision that a debtor's bankruptcy action provided a clear indication that his financial problems were under control.

³Directive, Enclosure 2 ¶ 20(a): "the behavior . . . occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." The only evidence of this event came from Applicant himself. There is insufficient record evidence about this matter to have enabled the Judge to draw a conclusion one way or another as to the purported uniqueness of Applicant's financial circumstances.

Applicant argues that his bankruptcy action demonstrates that he is doing everything he can to address his financial delinquencies. However, as stated above, the Judge relied to a large extent on evidence of the circumstances of Applicant's having acquired such a massive debt load. She concluded that these circumstances impugn Applicant's judgement and self-control, and that, in any event, his bankruptcy action had not sufficiently progressed so as to permit a reasoned conclusion that Applicant's problems were on the way to resolution. The record supports a conclusion 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 Judge's adverse 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 Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin
Jean E. Smallin
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