

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant has several delinquent debts although he has a net worth in excess of \$500,000. Adverse decision affirmed.

CASENO: 10-06781.a1

DATE: 12/12/2011

DATE: December 12, 2011

In Re:)
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 -----) ISCR Case No. 10-06791
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 Applicant for Security Clearance)
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)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 30, 2010, DOHA issued a statement of reasons (SOR) advising Applicant

of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 16, 2011, after the hearing, Administrative Judge Thomas M. Crean 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 the record raised Guideline F security concerns and whether the Judge erred in his application of the pertinent mitigating conditions. The Judge’s favorable resolution of the Guideline E security concerns is not at issue in this appeal. Consistent with the following, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a quality assurance and mission assurance engineer for a Defense contractor. Married with two step-children, he has three children from a previous marriage. He experienced unemployment from March 2009 until April 2010. His current annual salary is \$98,000. He has a net monthly income of \$9,600, with \$1,724 left over after expenses. His net worth is \$530,800.

Applicant has several delinquent debts, for an unpaid medical bill, a tax lien owed to the Internal Revenue Service, past due mortgage payments on a house that is in foreclosure, and a debt for telephone services. He denied the medical debt, which was for a missed appointment by his son. He denied the tax liability and presented evidence of his efforts to challenge the legitimacy of the debt. An administrative hearing officer ruled against him, and his appeal to the Tax Court was dismissed because he did not utilize the proper form in crafting his petition.¹ Applicant stopped making payments on his mortgage, because the housing market collapsed, and he owed more than the house was worth. However, Applicant and his wife continued to live in it for over a year after they stopped making payments, and his daughter resides there now. Regarding the telephone debt, Applicant’s daughter had made extensive use of text messaging, which resulted in a large bill. Applicant contends that the debt is not legitimate, because it was incurred by his daughter. He stopped making payments, and the phone company terminated the service.

In the Analysis, the Judge concluded that the debts at issue did not occur under unusual circumstances and that Applicant had not demonstrated responsible actions in relation to them. Applicant has the means to satisfy his delinquent debts, and the Judge characterized his approach in regard to his financial condition as “unreasonable and irresponsible.” Decision at 8. In the whole-person analysis, the Judge stated that “Applicant’s management of his finances and debt resolution show an unreasonable, irresponsible, and self-serving disregard for rules and regulations.” *Id.* at 10. He concluded that Applicant’s conduct “shows that he is unreliable, untrustworthy, and has no intention of following rules and regulations.” *Id.* at 11. Accordingly, he concluded that Applicant had not mitigated the Guideline F concerns alleged in the SOR.

¹The Judge stated that the IRS had placed Applicant on notice of his alleged tax deficiency and that Applicant had not pursued the matter to a clear resolution. Decision at 8.

Applicant contends that the evidence did not establish Guideline F security concerns. However, the documents submitted by the Government—the security clearance application, Applicant’s answers to DOHA interrogatories, and two credit reports—constitute substantial evidence² of the security concerns alleged in the SOR. Indeed, Applicant’s own evidence, including his hearing testimony, supports the Judge’s conclusion that the case raised security concerns. We find no error in the Judge’s analysis of this aspect of the case. Applicant has cited to a prior Appeal Board decision in support of his claim of error. While we have given this case due consideration, it does not demonstrate error by the Judge. *See, e.g.,* ISCR Case No. 09-03427 at 2 (App. Bd. Feb. 19, 2010).

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: 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

²In a DOHA hearing, the Government must present substantial evidence of any controverted allegation. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See* ISCR Case No. 08-06859 at 4 (App. Bd. Oct. 29, 2010).

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