

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant failed to rebut the presumption that the Judge had considered all of the evidence. The Judge’s material findings were based upon substantial evidence.

CASE NO: 11-01085.a1

DATE: 06/25/2013

DATE: June 25, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-01085
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 10, 2012, DoD 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 April 15, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 certain of the Judge's findings are erroneous; whether the Judge failed to consider all of the record evidence; and whether the decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings

The Judge found that Applicant is an employee of a Government contractor. She holds a bachelor's degree as well as a master's and is working on a dissertation for a doctoral degree. She paid for her own education and owes \$130,000 in student loans.

She experienced periods of unemployment and underemployment between 2007 and 2009. She found permanent employment in 2010.

In 2002, Applicant purchased a home for about \$136,000. She was making \$47,000 a year and her monthly payments were between \$800 and \$1,000. Her aunt, a realtor, assisted her with the transaction. Within six months of the home purchase, Applicant bought five other properties secured by mortgages totaling \$600,000. Applicant stated that she relied on her aunt's advice in buying these properties. She bought them through her aunt's business associate. She stated that she never looked at any loan documents, home appraisals, or lease applications and never put any money down. She attended no mortgage closings and did not know that the loans were secured by adjustable rate mortgages.

She testified that her purpose was to buy distressed properties, use the money received at closing to fix them up, rent them out and then sell them when they had appreciated. The Judge found that this testimony was not consistent with a statement she made during a clearance interview, to the effect that she wanted to make a "quick turnaround profit" from her properties. Decision at 3.

Although one of the properties sold for a profit, the others went into foreclosure. Applicant acknowledged that she owed deficiencies resulting from the foreclosure sales, presenting no evidence of attempts to contact creditors or resolve these debts. After she exhausted the funds she had received at the closings, her salary and rental income were not enough to pay the mortgage debts. Her problems became worse when the mortgage rates increased.

Applicant stopped making mortgage payments on her home, which also was foreclosed. She had rented this house, but a tenant caused substantial damage to it.

In her security clearance application (SCA), Applicant stated that in March 2003 she took a seven-day cruise, in March 2005 she took a five-day cruise, and in September of that year she took another cruise.

Applicant's aunt and the aunt's business associate were convicted in federal court of fraud arising from their real estate transactions. Applicant was not prosecuted and testified that she was a victim of fraud by her aunt.

The Judge's Analysis

Concluding that Applicant's circumstances raised Guideline F security concerns, the Judge found that none of the pertinent mitigating conditions were established by the evidence. He stated that Applicant's financial problems were ongoing and that she failed to demonstrate responsible action, both in the acquisition as well as the resolution of the debts. He stated that even if she were a victim of fraud, Applicant showed poor judgment by entering into real estate ventures that exceeded her financial capacities. Her failure to review any loan documents, property appraisals, or rental agreements constituted an abrogation of financial responsibility. He stated that Applicant had not demonstrated a track record of financial responsibility.

Applicant's real estate venture was also alleged under Guideline E. The Judge noted that Applicant no longer associates with her aunt, that she had consulted a lawyer, and that she had cooperated with federal agents investigating the aunt's fraudulent activities. However, the Judge found that she had not mitigated the concerns under this Guideline, concluding that the totality of Applicant's circumstances were such as to cast continuing doubt upon her judgment and reliability.

Discussion

Applicant contends that the Judge ignored evidence that demonstrates that her financial problems arose from circumstances outside her control, for example her periods of unemployment, illness, and evidence that she was a victim of fraud. The Judge made detailed findings about her real estate investments, including Applicant's testimony that she had been a victim of fraud. He also made findings about her unemployment. A Judge is not required to make findings about all of the evidence in the record, which would be a practical impossibility. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-07447 at 3 (App. Bd. Apr. 11, 2013). Rather, her brief appears to be a disagreement with the Judge's weighing of the evidence, which is not enough to demonstrate error.

Applicant challenges some of the Judge's findings of fact. For example, she contends that the Judge misstated the evidence regarding her cruises and that the Judge erred by misstating the circumstances surrounding her foreclosures, arguing that there was no evidence showing any outstanding deficiencies on the investment properties. The Judge's finding about the cruises appears to have been drawn from Applicant's answer to the SCA. Government Exhibit (GE) 1 at 27. The Judge did not misstate the contents of this answer. Moreover, the Judge's finding that Applicant owed deficiencies on the four foreclosure homes was consistent with her testimony at the hearing. Tr. at 173-174. Even if the Judge's findings contain errors, Applicant has cited none that likely exerted an effect on the outcome of the case. The Judge's material findings of security concern are based upon substantial record evidence. *See, e.g.*, ISCR Case No. 11-06659 at 5 (App. Bd. Oct. 22, 2012).

Applicant cites to a 2008 Appeal Board decision which she argues is "on all fours" with her case. In the cited case, the Judge had found that Applicant was "acting responsibly" and had "taken steps to resolve the delinquent debts with the mortgage holder . . ." We remanded that case to

resolve the discrepancy between those (sustainable) findings and the Judge's adverse conclusions. The decision in this case has no such discrepancy. *Compare* ISCR Case No. 07-15321 at 3 (App. Bd. Dec. 15, 2008).

After considering Applicant's appeal arguments in light of the record as a whole, we conclude that 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