

KEYWORD: Guideline F

DIGEST: Applicant contends that he was not advised of the full extent of the information the Judge wanted at hearing. He states that he was not advised in advance that he may need to provide evidence of current income, expenses, and the net remainder of his income after expenses. In a DOHA hearing, the applicant bears the burden of persuasion concerning mitigation of the security concerns raised by his conduct. Directive ¶ E3.1.15. There is no basis in the record to conclude that Applicant was not apprised of his obligation to present evidence in mitigation or that he was somehow misled regarding the appropriate content of his presentation. Adverse decision affirmed.

CASE NO: 11-04088.a1

DATE: 01/29/2013

DATE: January 29, 2013

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| In Re: |) | |
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| ----- |) | ISCR Case No. 11-04088 |
| |) | |
| Applicant for Security Clearance |) | |
| _____ |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 25, 2012, 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 November 2, 2012, after the hearing, 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: whether he was deprived of due process and whether the Judge’s decision was arbitrary, capricious, and contrary to law. Consistent with the following, we affirm.

Facts

The Judge made the following findings pertinent to the issues raised on appeal: Applicant operated a business out of his house. However, the business developed financial problems in about 2007, so Applicant turned the operation over to his son. In addition, Applicant’s wife lost her job as an aid in the local school system.

Prior to this, Applicant and his wife had decided to construct two buildings on an 11.37 acre property. They completed the smaller of the two and then took out a \$362,000 home equity loan to build a 3,600 square foot home. After exhausting their line of credit, they took out a \$535,000 loan to finance completion of the home and to repay the home equity loan. They also accrued substantial credit card debts for the purchase of construction materials and for other expenses.

The bank withheld the fifth disbursement of loan funds, placing the money in an escrow account until Applicant obtained a certificate of occupancy for the house. Applicant became unable to pay both his mortgage and the future construction costs, so he and his wife filed for Chapter 13 bankruptcy protection. This was dismissed because they failed to make payments. A second Chapter 13 filing was dismissed when the Judge refused to grant a stay of the mortgage obligation. Applicant attempted a short sale, but the prospective buyer was not willing to pay a non-refundable deposit of \$67,500. The bank foreclosed and charged off a \$71,500 deficiency.

In the Analysis, the Judge concluded that the Government had not presented substantial evidence regarding four of the eighteen debts alleged in the SOR. However, regarding the balance, she concluded that the debts raised Guideline F security concerns.

The Judge noted that most of these debts were unresolved. Although Applicant claimed that some had been paid by the foreclosure process, he provided no corroboration. The Judge stated that Applicant’s business difficulties and his wife’s job loss were circumstances outside their control. However, she also concluded that Applicant had not exhibited responsible action in regard to his financial condition, for example by having taken on more debt than he could reasonably repay in the construction of his new home.¹

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[.]”

Although Applicant contended that the bank had violated the terms of his loan agreement by placing funds in escrow, the Judge stated that there was not sufficient evidence in the record to support that claim. The Judge also concluded that Applicant had not provided sufficient evidence of (1) a clear indication that his financial problems were under control² or (2) a good-faith effort to repay his debts.³ In the whole-person analysis, the Judge stated that Applicant had not demonstrated a track record of debt repayment sufficient to mitigate the security concerns raised by his financial problems. *See, e.g.*, ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008), which the Judge cited in her decision.

Discussion

At the close of the hearing, the Judge held the record open for three weeks in order to give Applicant an opportunity to provide additional evidence concerning debt resolution, which he did. Tr. at 104. The documents Applicant submitted were admitted into the record as Applicant Exhibits I through O. These documents include Applicant's communications with various creditors, a certificate that Applicant's real estate taxes were up to date, a redemption deed, etc.

In his appeal brief, Applicant contends that he was not advised of the full extent of the information which the Judge wanted. He states that he was not advised in advance that he may need to provide evidence of current income, expenses, and the net remainder of his income after expenses.

It is true that, in discussing the post-hearing extension of time, the parties appeared to contemplate that Applicant would submit evidence of debt resolution, and they made no mention of income and expenses. However, the Judge's decision rests on evidence that Applicant had overextended himself in entering into the construction contract for the larger house and that he had not demonstrated responsible action concerning his delinquent debts. Although she noted that Applicant has about \$500 in discretionary income each month (Decision at 11), this does not appear to have been a significant factor in her decision. In a DOHA hearing, the applicant bears the burden of persuasion concerning mitigation of the security concerns raised by his conduct. Directive ¶ E3.1.15. There is no basis in the record to conclude that Applicant was not apprised of his obligation to present evidence in mitigation or that he was somehow misled regarding the appropriate content of his presentation.

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

²Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

³Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

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 decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board