

KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all of the evidence in the record. Applicant failed to rebut that presumption or to show that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 14-00566.a1

DATE: 11/18/2014

DATE: November 24, 2014

In Re:)	
)	
-----)	ISCR Case No. 11-11920
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 14, 2014, 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 August 27, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Arthur E. Marshall, Jr., 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

In the mid-2000s, Applicant attended a local college, taking out student loans to cover the \$10,000 tuition. He completed six months of study, after which he found a job and made payments on the loans. However, in late 2007, he lost his job and, as a consequence, abandoned his plan to complete his degree.

Two years later, a part-time employer offered Applicant a full-time position. Because of the attending pay raise, Applicant and his son bought a house. Unfortunately, his employer reduced him to part-time status, at which point he could not longer afford his mortgage payments. He abandoned the house, which went into foreclosure. Applicant neglected other debts, including his student loans. Although he attained full-time employment in 2011, his pay was at a reduced rate. He was able to pay some, though not all, of his debts. About this time he divorced his wife, although there is no evidence as to the effect that this event exerted on Applicant's finances.

Applicant owed a debt for back taxes owed to his county, due to mistakes by his accountant. He also owed money to the IRS. His wages were garnished to pay his back taxes. Applicant borrowed some money, but it was not enough to cover all of his obligations.

Applicant's SOR alleged several delinquent debts, for utility bills, student loans, telecommunications services, etc. Although he demonstrated resolution of some of these debts, the Judge found that there was insufficient evidence to corroborate Applicant's claims to have addressed or disputed the others. There is no evidence of financial counseling. Neither is there evidence of "a clear, practical, and workable plan for addressing the remainder" of Applicant's debts. Decision at 4.

The Judge's Analysis

The Judge resolved some of the SOR debts in Applicant's favor. For the balance, however, which constituted a majority of the allegations, the Judge found that Applicant had not met his burden of production. He cited to a lack of evidence to corroborate Applicant's claims of debt payment, concluding that, although Applicant's financial condition was affected by circumstances outside his control, he had not shown responsible action in regard to his debts. He stated that Applicant's efforts to address his problems have been "ad hoc" and recent, for example the satisfaction of his tax debts through garnishment. *Id.* at 6. He stated that Applicant's course of action has been haphazard and relatively minor when compared with the magnitude of his financial problems.

In the whole-person analysis, the Judge noted that, despite having held the record open after the hearing to give Applicant time to submit corroborating evidence, he did not do so for a majority of his debts. He again characterized Applicant's efforts as "ad hoc." *Id.* at 7.

Discussion

Applicant contends that his case contained inaccuracies, citing to evidence that he believes demonstrates debt resolution. We have considered Applicant's arguments in light of the record as a whole. We conclude that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant's citations to various pieces of evidence and to his hearing testimony are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). An ability to argue for an alternative interpretation of the evidence is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014).

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 Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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