

KEYWORD: Guideline F

DIGEST: Given Applicant's longstanding awareness of his delinquent debts and his dilatory efforts at repayment, the Judge's weighing of the evidence was not arbitrary, capricious or contrary to law. Adverse decision affirmed.

CASENO: 11-13626.a1

DATE: 11/07/2013

DATE: November 7, 2013

In Re:)
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-----) ISCR Case No. 11-13626
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Applicant for Security Clearance)
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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 February 27, 2013, 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 September 10, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 on appeal: whether the Judge failed to consider all of the evidence in the record and 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

Applicant is an employee of a Federal contractor. He has completed some courses toward a bachelor’s degree. He has served in the U.S. military, retiring as an E-7. Applicant has held DoD security clearances since 1979, the year he entered active duty. There is no evidence that he has ever violated security regulations or procedures.

Applicant married his current spouse in 1998. Because of Applicant’s deployments while serving in the military, his spouse handled their finances. In 1999, Applicant and his spouse filed for Chapter 13 bankruptcy protection.

In 2001, Applicant completed a security clearance application (SCA), disclosing his bankruptcy. During an interview he discussed several consumer credit accounts totaling over \$50,000 that had been included in his bankruptcy action. During this interview Applicant advised that he realized that he and his spouse had to live within his means, avoiding unneeded credit and limiting debt to that which was essential and which could be managed within their budget.

Applicant subsequently acquired more delinquent debt, mainly for credit cards. He has experienced several instances of unemployment. In his response to the SOR, he stated that he had been delinquent in paying his debts “out of my own stupidity.” Decision at 7. After the date of the hearing, Applicant met with a debt management company. He agreed to make an initial payment of \$263, with subsequent monthly payments of \$213, in exchange for which the company would attempt to negotiate with Applicant’s creditors and make payments on his behalf. Applicant presented no evidence showing which of his debts were included within this plan. Applicant’s spouse has a couple of delinquent debts of her own and is negotiating repayment. His ability to make the \$213 payments is dependent on his spouses income.

Applicant has described himself as “not the most financially savvy person.” *Id.* at 8. He now understands that he and his spouse undertook more credit card debt than they could afford. Indeed, they used credit cards to make payments on other credit cards.

Applicant is active in the Boy Scouts of America, the Veterans of Foreign Wars, and a religiously-affiliated charitable organization. His fellow workers and the vice-president of his employer are aware of his financial problems. He enjoys a good reputation for trustworthiness.

The Judge's Analysis

The Judge concluded that Applicant's financial circumstances raised Guideline F security concerns. The Judge also concluded that Applicant had failed to mitigate those concerns. In doing so, she cited to evidence that Applicant had made no payments on any of his debts as of the close of the record. Although noting that Applicant's debts were affected by circumstances beyond his control, his periods of unemployment, she concluded that Applicant had not demonstrated responsible action in regard to them. She stated that Applicant's SOR debts originated after he had gained full employment and that he had stopped paying at least some of them while he held a full-time job and was receiving a military paycheck. She noted that, even after having been hired by his current employer, Applicant had failed to address even relatively small delinquencies that he should have been able to manage. She cited to Applicant's bankruptcy action, to his 2001 SCA and investigation, and to his 2011 clearance interview, all of which put him on notice that delinquent debts were matters of security concern. However, despite this notice, he did not begin to develop a plan for paying off his debts until after the date of the hearing. She stated that, his recent payment plan notwithstanding, Applicant had failed to demonstrate a track record of debt resolution. In the whole-person analysis, the Judge cited to Applicant's evidence that he had permitted his wife to handle the finances, resulting in his being unaware of the problems at issue in this case. The Judge stated that the evidence demonstrated a level of inattention to debt obligations that was not consistent with the judgment expected of someone who holds a clearance.

Discussion

Applicant takes issue with the Judge's treatment of the mitigating conditions, citing in particular to her statement that he had not demonstrated a track record of debt repayment. He argues that when she held the record open for him to submit additional evidence, it was not with the understanding that he had to show that he had been on his debt repayment plan for a specified period of time. We have examined the transcript of the hearing. While the Judge gave Applicant three weeks after the hearing to submit evidence that he had contacted an attorney to set up a payment plan, she did not state or intimate how much weight she would extend to this evidence or that it would be dispositive of Applicant's security concerns. Given the facts that were before her, particularly Applicant's longstanding awareness of the significance of his delinquent debts and his dilatory efforts at repayment, her treatment of the repayment plan was reasonable.¹ Applicant has not demonstrated that the Judge weighed this evidence, or any of the other evidence, in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 09-01970 at 3 (App. Bd. Oct. 29, 2010), to the effect that a party's disagreement with the Judge's weighing of the record or an ability to argue for a different interpretation of the evidence is not sufficient to show that the weight that Judge assigned to the evidence was arbitrary, capricious, or contrary to law.

¹“Q: . . . Have you, at this point, made any payments at all on any of these debts? A: No, sir . . . It's my fault. Q: Now . . . it looks like several of these debts . . . date back to 2007 when you were gainfully employed . . . Can you explain why, at a time where you had been gainfully employed for several years, why you weren't able to pay any of these debts down? . . . A: I don't, I'm just—no excuse.” Tr. at 47-48.

Applicant cites to evidence, and the Judge’s finding, that he has held a clearance for many years without incident or concern. While this was evidence the Judge was required to consider, along with all the other evidence in the record, Applicant has not rebutted the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 11-12204 at 4 (App. Bd. Jul. 22, 2013). The Judge made a finding about Applicant’s good security record and discussed this finding in her whole-person analysis. However, her overall adverse decision was consistent with the record that was before her. The Government need not wait until an individual has mishandled classified information to make an unfavorable clearance decision. *See, e.g.*, ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009). Security clearance adjudications are predictive in nature, and it is foreseeable that persons with prior good records may nevertheless engage in conduct or undergo circumstances that raise doubts about their future judgment or reliability. *See, e.g.*, ISCR Case No. 03-04927 at 5 (App. Bd. Mar. 5, 2005).

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

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

Separate Opinion of Administrative Judge Michael Y. Ra’anan

I agree with the majority analysis of the dispositive issues in this case.

Applicant highlights an interesting situation which appears occasionally in DOHA proceedings and is worthy of consideration. He notes that the Judge left the record open for him to produce evidence of his commencing arrangements to pay his debts. He further notes that there was no stipulation at the hearing as to how much debt needed to be repaid or by what date.

Applicant has put his finger on a problem which a Judge may sometimes have at the end of the hearing. There is a sound reason to leave the record open so that the Applicant can have every opportunity to develop a favorable record, even if it may not be likely that they can successfully mitigate the security issues at hand. On the other hand, applicants choosing to avail themselves of the additional time may take actions that have serious consequences beyond the context of their current security clearance adjudication. Thus, on occasion the additional time after the hearing was used by an applicant to commence legal proceedings such as bankruptcy or to return a passport to a foreign government. Such cases have been appealed by the applicants when the Judges concluded that the post-hearing actions were insufficient to mitigate the totality of the government's security concerns. Of course, at the end of the hearing, a Judge has not yet had time to integrate and analyze all the evidence that has been presented. And no Judge can analyze evidence that has not yet been presented.

Having noted the issue, I cannot claim to have a ready resolution. Each case is different and to an extent each Judge has discretion in approaching procedural issues.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board