

KEYWORD: Guideline F

DIGEST: Applicant’s argument consists, on the whole, of a disagreement with the weighing of the evidence. We find no reason to believe that the Judge failed properly to apply the whole-person concept, Adverse decision affirmed.

CASENO: 11-14723.a1

DATE: 10/03/2014

DATE: October 3, 2014

In Re:	)	
	)	
-----	)	ISCR Case No. 11-14723
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

James Q. McDermott, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 8, 2014,<sup>1</sup> 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 July 17, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

<sup>1</sup>Decision at 1. The SOR is undated.

Applicant raised the following issues on appeal: whether Applicant was denied due process; whether the Judge's findings of fact contained errors; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant's SOR alleges numerous delinquent debts that Applicant attributes to the combined effects of the crash of the real estate market and to a divorce. He owned a house (H1) and built another one (H2). However, he was not able to maintain two mortgages and found that he could not sell either house. In 2009, Applicant's wife filed for a divorce, which remained pending at the close of the record. Both houses went into foreclosure. The Judge found that the deficiency resulting from the foreclosure sale of H1 had been forgiven. However, he found that Applicant remained liable on the deficiency regarding H2. Other debts include a judgment in favor of a contractor who had performed work during the construction of H2, credit cards, cable TV services, medical expenses, etc. The Judge found that Applicant was resolving the judgment and that one of the credit card debts was expected to be forgiven. However, the remaining debts were outstanding.

### **The Judge's Analysis**

The Judge stated that Applicant's unaddressed debts totaled in excess of \$155,000 and formed the bulk of the SOR allegations. Although noting evidence of circumstances outside Applicant's control that affected his financial situation, the Judge concluded that Applicant had not demonstrated responsible action for these remaining debts.<sup>2</sup> He noted the favorable character references Applicant had submitted in his own behalf but concluded that the evidence that Applicant had submitted was not sufficient to meet his burden of persuasion regarding mitigation.

### **Discussion**

Applicant represented himself at the hearing. On appeal he argues that he "was not capable of adequately advocating for his own interest and didn't understand the significance of certain evidence." Appeal Brief at 2.

We note that, prior to the hearing, Department Counsel provided Applicant with a letter in which he advised him of his right to hire counsel and to submit evidence, among other things. This letter provided insight into the kind of evidence that applicants sometimes submit, such as character statements, receipts, and other documents pertinent to the allegations. Applicant Exhibit (AE) A. DOHA also provided pre-hearing guidance advising Applicant of his various rights, and he received a copy of the Directive as well. At the hearing the Judge questioned Applicant on his qualifications to represent himself and questioned him from time to time in order to clarify Applicant's testimony. Applicant submitted numerous documents during his case in chief, addressing at least some of the allegations in the SOR. The record demonstrates that Applicant was properly advised of his rights

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<sup>2</sup>Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

and that he presented his evidence in mitigation with reasonable skill. *Pro se* applicants are not expected to conduct themselves like lawyers, but they should take reasonable steps to protect their rights. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014). The record shows that Applicant presented his case with a reasonable degree of competence, given his *pro se* status. He was not denied the due process afforded by the Directive.

Applicant challenges the Judge's findings regarding the extent to which he has resolved his delinquent debts. He argues that he owes no deficiency from the foreclosure sale of H2, due to the state's anti-deficiency statute. He also argues that he had resolved more of his debts than the Judge found, asserting that his actual remaining debts total a little less than \$66,000. We examine a Judge's findings to see if they are supported by "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.

We conclude that the challenged findings are supportable, given the record that was before the Judge. In any event, a Judge should consider not only the extent to which debts have been paid, but also the circumstances underlying those debts that impugn an applicant's good judgment. *See, e.g.*, ISCR Case No. 10-06975 at (App. Bd. Apr. 19, 2012). Even if the Judge's findings contained errors, it is not likely that they exerted a significant effect on his overall decision. The Judge's material findings of security concern are supported by substantial evidence or constitute reasonable conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant cites to record evidence that he submitted in his own behalf, including his character statements, his good security history, and the effects of the economic downturn and his divorce on his finances. Applicant also submits evidence from outside the record, that we cannot consider. *See, e.g.*, ISCR Case No. 12-04554 at 4 (App. Bd. Jul. 25, 2014). Applicant's argument on appeal is not sufficient 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). He argues that the Judge engaged in a piecemeal analysis of the record, failing to examine Applicant's circumstances in their totality. Applicant's argument consists, on the whole, of a disagreement with the Judge's weighing of the evidence, as Department Counsel argues in his Reply Brief. We find no reason to believe that the Judge failed properly to apply the whole-person concept. *See, e.g.*, ISCR Case No. 12-05232 at 4 (App. Bd. Jun. 30, 2014).

Applicant's brief cites to other Hearing Office cases that, he argues, support his effort to maintain his clearance. We give these cases due consideration as persuasive authority. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 11-10178 at 3 (App. Bd. Aug. 29, 2013). Each case must be decided on its own merits. The cases Applicant has cited are not sufficient to demonstrate that the Judge improperly weighed the evidence or otherwise reached conclusions that ran contrary to the evidence.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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