

KEYWORD: Guideline F

DIGEST: Even though Applicant admitted the delinquent debts alleged in the SOR, the government produced documentary evidence of them. The Judge's findings of fact were based on substantial evidence. Adverse decision affirmed.

CASENO: 11-14570.a1

DATE: 10/23/2013

DATE: October 23, 2013

In Re:)
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 -----) ISCR Case No. 11-14570
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)
 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 18, 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 August 20, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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

Applicant works for a Defense contractor. He has worked for this employer since 2010 and has held a security clearance since 2009 without incident.

From 2007 to 2009, Applicant lived with a woman who was unemployed. Applicant supported her, taking out a credit card in her name and letting her use it. He traveled often, and she used the card while he was gone. In 2010, Applicant was furloughed from his job for 70 days. He collected unemployment during this period. He did not realize that income taxes were not being deducted from his unemployment compensation, and he found that he owed back taxes. Applicant has resolved this debt to the IRS. His SOR listed five debts, three of which formed the basis for the Judge’s adverse decision. The largest debt, in the amount of over \$13,000, was incurred by his girlfriend. For the three debts at issue here, Applicant entered into payment agreements and made the first payments on each a few days prior to the hearing.

When interviewed about his debts in 2011, Applicant stated that he had not paid them because he had not been receiving steady work. He advised that he intended to pay them. In an answer to a DOHA interrogatory in February 2013, Applicant stated that he had not made payments and that he had undertaken no contact with creditors due to his having been working overseas. When asked at the hearing why he had only recently begun making payments, he stated that he had been traveling “nonstop” for the past 12 months and that debt repayment had not been high on his list of priorities. Decision at 3. He stated that he had financial resources set aside, but that he had not gotten in contact with his creditors. He stated that, with his job on the line, he had to use these funds to pay his debts. Although he has never received financial counseling, Applicant stated that he was receiving financial advice from his mother. Applicant’s personal financial statement, included with Government Exhibit 4, Answers to Interrogatories, shows a negative net monthly remainder of \$403.

Applicant’s employer values him for work ethic and trustworthiness.

The Judge’s Analysis

The Judge concluded that Applicant's financial circumstances raised disqualifying conditions 19(a)¹ and (c).² He further concluded that Applicant has failed to meet his burden of persuasion as to mitigation regarding three of the debts alleged in the SOR, clearing Applicant of the other two. He characterized Applicant's debts as ongoing, some of them having been delinquent for four to six years. Although his furlough was a circumstance beyond his control, the Judge concluded that Applicant had not acted responsibly in regard to his debts. The Judge stated that Applicant's reasons for having delayed addressing his debts were not consistent and that Applicant's procrastination failed to demonstrate reliability, trustworthiness, and good judgement. Insofar as Applicant began making payments on the debts at issue here only because his security clearance was in jeopardy, the Judge stated that he was not convinced that Applicant would continue with payments in the future. He said that Applicant had failed to show a meaningful track record of payment.³ In the whole-person analysis, the Judge acknowledged Applicant's evidence that he is a good employee. However, he stated that Applicant had presented insufficient evidence that his debt problem is being resolved or is under control. The Judge stated that Applicant had failed to demonstrate that his conduct in regard to his debts was responsible and prudent.

Discussion

Applicant contends that the Judge erred in concluding that his circumstances raised security concerns. When an applicant controverts a SOR allegation, the Government bears the burden of producing substantial evidence of the allegation. Substantial evidence is "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 ¶¶ E3.1.14; E3.1.32.1. *See* ISCR Case No. 11-00046 at 2 (App. Bd. Feb. 10, 2012). In the case before us, Applicant admitted the debts in his response to the SOR. Accordingly, they were not controverted, and the Government bore no burden of production. Nevertheless, the Government presented evidence in the form of Applicant's answers to pertinent questions in his security clearance application; credit reports; and Applicant's answers to DOHA interrogatories. These documents, when read in conjunction with Applicant's hearing testimony and SOR admissions, support the Judge's findings that Applicant had five debts totaling nearly \$18,000 that had been delinquent for several years. This evidence is sufficient to raise a concern that Applicant has been unwilling to pay his debts and that he has a history of failing to pay his debts, thereby shifting the burden of persuasion as to mitigation to Applicant. Directive ¶ E3.1.15. We find no error in the Judge's application of the disqualifying conditions.

Applicant cites evidence that he was previously awarded a security clearance, despite the presence at that time of some financial problems. However, the Government is not precluded from making an adverse clearance decision despite prior favorable ones, and a good security record is not

¹Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]"

²Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

³"[I]ntentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches" ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009) (internal citation omitted)

a bar to an unfavorable decision. *See, e.g.*, ISCR Case No. 06-23613 at 4 (App. Bd. Feb. 4, 2013). Each case must be decided on its own merits. Directive, Enclosure 2 ¶ 2(b). In this case, evidence that Applicant has carried a substantial amount delinquent debt for several years and only recently began addressing it supports the Judge’s adverse decision. Indeed, the time that has elapsed since Applicant’s last clearance approval, during which he failed to address his significant debt load, is an aggravating circumstance present in the record before us which was, by definition, absent from the previous one. Although Applicant’s good security record and his prior favorable adjudication were matters the Judge was bound to consider, along with all the other evidence in the record, Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-05685 at 2 (App. Bd. Jul. 12, 2013).

Applicant describes his interactions with the Department Counsel prior to and during the hearing, characterizing them as amicable. He stated that the hearing was “relatively clean, cut and dry” and that nothing in the hearing “came off as suspicious.” Appeal Brief at 1. He stated that he was surprised, therefore, at the adverse decision. He points to nothing in the hearing, or in his interactions with DOHA prior to the hearing, that contravened the Directive. To the extent that Applicant is contending that the Judge’s decision was based on matters outside the record or that the Judge lacked the requisite impartiality, his contention fails for lack of specificity. *See, e.g.*, ISCR Case No. 99-0519 at 9 (App. Bd. Feb. 23, 2001).

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