

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. An ability to argue for an alternative interpretation of the record is not enough to show that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 12-01500.a1

DATE: 08/25/2015

DATE: August 25, 2015

In Re:)	
)	
-----)	ISCR Case No. 12-01500
)	
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 June 9, 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 June 19, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 considered all of the evidence; whether the Judge failed properly to weigh the evidence; whether the Judge’s whole-

person analysis was erroneous; 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 has a doctorate from a prestigious university. He is married, with three adult offspring. His financial problems began in 2004, when he resigned from a position from a company in order to seek outside capital to purchase the company. This plan did not succeed, and Applicant was unemployed for two years. While he was out of work, Applicant suffered from some medical problems. He was offered a job in 2006, but he was laid off a year later. After a period of self-employment, Applicant's current employer hired him.

After leaving the company in 2004, Applicant began drawing down his retirement funds to pay monthly expenses, health insurance premiums, and his offsprings' college tuition. In addition, he discovered that he was unable to pay his Federal taxes for 2008 and 2009. The IRS initiated enforcement action. Applicant entered into an installment agreement with the IRS to pay his past-due taxes, which amounted to \$94,000. He paid on this agreement for five months, then entered into a second installment agreement three weeks after the issuance of the SOR and a few days after the IRS gave him a "final notice before levy on social security benefits." Decision at 3. As of May 2015, Applicant owed the IRS a little over \$90,000.

Applicant's financial statement shows a net monthly income of over \$13,000 and expenses of over \$16,500, leaving Applicant with a deficiency. One of the expenses listed was \$1,300 for his 26-year-old daughter, although he was paying nothing to the IRS at the time.

In his Answer to the SOR, Applicant stated that he would resolve his debts by selling some real property. However, he had to take it off the market because of water damage. He believes that its eventual sale will result in enough funds to pay off his debts.

Applicant has paid some of the debts alleged in the SOR. As of the close of the record, though, Applicant still has a Federal tax lien for over \$95,000 and five charged-off credit card debts, totaling over \$80,000, are unresolved.

The Judge's Analysis

The Judge concluded that Applicant's debts are numerous, substantial, and ongoing. He stated that Applicant did not incur the debts under unusual circumstances but, rather, as a result of his conscious decision to spend beyond his means. He stated that Applicant had ignored his tax obligation until the IRS initiated enforcement action and that he has yet to contact his creditors regarding the credit card debts. Though noting Applicant's lengthy unemployment and medical problems, which were beyond his control, the Judge concluded that he had failed to demonstrate responsible action in regard to his debts. The Judge cited to evidence that Applicant secured a well-paying job four years ago, providing him with a monthly income of \$15,000. Nevertheless, he still has over \$170,000 in delinquent debt. The Judge stated that the only non-tax debt that Applicant

had addressed was one that had been reduced to judgment. The Judge concluded that this circumstance diminished the mitigating effect of this instance of debt resolution.

In the whole-person analysis, the Judge cited to Applicant's favorable evidence and to the matters in extenuation that he had submitted, including the laudatory character references and his dedication to his family. He also cited to evidence that Applicant has begun making some inroads into paying his debts. However, the Judge concluded that this favorable evidence was not enough to outweigh the concerns raised by Applicant's financial problems.

Discussion

Applicant contends that the Judge did not consider all of the record evidence. For example, he argues that the Judge did not consider evidence addressing his reasons for having entered into a second installment agreement with the IRS.¹ He cites to an exhibit concerning dismissal of a judgment against him in favor of a credit card company, although this appears to be in reference to a debt that the Judge resolved in Applicant's favor.² He also argues that the Judge did not read through all of the exhibits that he submitted. These arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-09118 at 3 (App. Bd. Mar. 25, 2015). A Judge is not required to discuss each and every piece of record evidence, which would be a practical impossibility. *See, e.g.*, ISCR Case No. 11-00542 at 2 (App. Bd. Apr. 13, 2012).

Applicant takes issue with the manner in which the Judge weighed the evidence. He cites in particular to Mitigating Condition 20(b),³ pointing out evidence of circumstances outside his control that affected his financial condition. The Judge addressed Applicant's unemployment and medical problems in his decision, explaining, however, why he concluded that Applicant had not presented sufficient evidence of responsible action in regard to his debts. Applicant's argument consists of an alternative interpretation of the record, which is not enough 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. 14-00251 at 4 (App. Bd. Oct. 10, 2014). Moreover, we conclude that the Judge's whole-person analysis complied with the requirements of the Directive, in that he addressed Applicant's security-significant conduct in light of the record as a whole. *See, e.g.*, ISCR Case No. 12-03077 at 2-3 (App. Bd. May 13, 2013).

¹Applicant cites to the statement in the Decision to the effect that he waited to enter into a second installment agreement with the IRS until after he had been threatened with garnishment of his social security income. He states that the Judge did not ask why he did this, and, had he done so, Applicant would have been able to provide an explanation. It is an applicant's task to provide evidence in mitigation, extenuation, rebuttal, etc. Directive ¶ E3.1.15.

²Applicant has a point that the Judge's comment that the circumstances of this debt are not fully mitigating seems inconsistent with his ultimate favorable finding for the allegation. However, this favorable finding also demonstrates that any error here did not redound to Applicant's harm.

³Directive, 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[.]"

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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