

KEYWORD: Guideline F

DIGEST: Applicant’s citation to favorable evidence is not sufficient to rebut the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 12-02817.a1

DATE: 04/17/2015

DATE: April 17, 2015

In Re:)	
)	
-----)	ISCR Case No. 12-02817
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 28, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis of 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 January 29, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 served on active duty with the U.S. military from 1973 to 1977 and in the National Guard from 1981 to 2004. He has held a security clearance for over 30 years. Divorced and remarried, Applicant has an adult son and five stepchildren. Since 2010, he has been living abroad.

Applicant filed for Chapter 7 bankruptcy in 2001 for about \$90,000 in nonpriority unsecured debt.¹ His SOR alleges ten delinquent debts, in the amount of about \$19,000. He claimed that five of the accounts had been resolved, either by payment or by removal from his credit report. Applicant’s wife is disabled and cannot work. When she had to stop working, the family income dropped by \$45,000. Moreover, Applicant’s wife used credit cards and did not pay the balances. Applicant provided financial assistance to his adult offspring, spending about \$32,000 on them.

Applicant contacted a law firm to negotiate settlements for him with his creditors. He claims he has received no communication from the firm in about six months and did not provide a list of accounts that may have been settled. Applicant has two savings accounts, totaling about \$28,000. In addition, his net monthly income is \$17,000. Applicant enjoys a good reputation for his work ethic and leadership. He is viewed as trustworthy.

The Judge’s Analysis

The Judge concluded that Applicant’s delinquent debts gave rise to security concerns. In evaluating Applicant’s case for mitigation, she noted his wife’s disability and consequent inability to work. However, she stated that Applicant’s debts are still unresolved. She found that Applicant had not acted responsibly in regard to his debts. The Judge stated that Applicant had the apparent ability to pay his delinquent debts but had procrastinated until his security clearance fell into jeopardy. She concluded that Applicant had not met his burden of persuasion as to mitigation.

Discussion

¹ “[Department Counsel]: . . . back in 2000 you filed for Chapter 7 bankruptcy? [Applicant]: Yes. [Department Counsel]: In which approximately \$90,000 . . . worth of debt was wiped out. [Applicant]: Yes.” Tr. at 52-53.

Applicant argues that “conditions that could raise a security concern” are not applicable. However, evidence of Applicant’s ongoing debts and his dilatory effort at addressing them is sufficient to raise Guideline F concerns. The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s worthiness for a clearance. *See, e.g.*, ISCR Case No.12-01295 at 3 (App. Bd. Jan. 20, 2015). Applicant’s citation to favorable evidence, such as his good work record and his having held a clearance for many years, is not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it 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. 14-00998 at 5 (App. Bd. Mar. 19, 2015). We give due consideration to the Hearing Office cases that Applicant has cited. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 13-01297 at 2-3 (App. Bd. Mar. 9, 2015).

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