

KEYWORD: Guideline F

DIGEST: The Judge's challenged finding is drawn from the interview summary certified by Applicant as accurate. Adverse decision affirmed.

CASENO: 12-03270.a1

DATE: 09/17/2014

DATE: September 17, 2014

_____)	
In Re:)	
)	
-----)	ISCR Case No. 12-03270
)	
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 November 26, 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 decision on the written record. On June 5, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 entered the military in 1984, retiring in 2009. He began working for a Defense contractor upon his retirement. He held a clearance while on active duty and has retained it during his civilian employment. He is married with three adult children.

Applicant's SOR alleges eleven delinquent debts. The Judge found that he had resolved two of them but that the remaining nine were ongoing. He stated that Applicant had presented no evidence that he had paid, resolved, or disputed these debts. Rather, Applicant simply contended that the debts were no longer listed in his credit reports. The Judge found that these debts were either charged off, referred for collection, or purchased by other creditors. During his clearance interview, Applicant stated that he did not intend to pay his charged off debts. He offered no explanation for his financial situation, except to say that his debts "'snowballed' because of excessive spending." Decision at 2. His monthly net pay is \$5,085, and his expenditures are \$4,381, leaving a remainder of \$704.

The Judge's Analysis

The Judge concluded that, except for the two mentioned above, Applicant's debts are ongoing, numerous, and not the result of circumstances beyond his control. He has not sought financial counseling, and he has not disputed the legitimacy of his debts. His only response to his financial situation is to assert that his debts are not reflected on his most current credit report. However, the Judge stated that this proves nothing about the debts except their age. "[M]erely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor." *Id.* at 5. In the whole-person analysis, the Judge stated that Applicant's choice of a decision without a hearing precluded him from evaluating Applicant's demeanor or questioning him in more depth about his debts. Though acknowledging Applicant's years of service in the military, he found that all but one of Applicant's debts had become delinquent during the course of that service. Despite continuous employment with a steady income, Applicant has not undertaken to address his debts. The Judge concluded that Applicant had not met his burden of persuasion regarding mitigation.

Discussion

Much of Applicant's appeal brief contains information from outside the record. We cannot consider new evidence on appeal.¹ Directive ¶ E3.1.29. *See* ISCR Case No. 12-04554 at 4 (App. Bd. Jul. 25, 2014). Applicant challenges the Judge's finding that he had told his interviewer that he would not pay his charged-off debts. He claims that this is not an accurate depiction of his answer. The Judge's finding is drawn from the interviewer's summary of Applicant's answers, which Applicant had certified as accurate. Interview Summary at 3, 6, included in Item 6, Answers to Interrogatories. Applicant's argument on appeal is not sufficient to undermine the challenged findings. The Judge's material findings of security concern are based upon substantial record evidence. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). Applicant cites to evidence that he has paid certain debts. The Judge made findings about the two SOR debts Applicant had resolved, but he reasonably concluded that Applicant had not mitigated the remaining nine. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-06925 at 5 (App. Bd. Dec. 13, 2013).

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. *See* ISCR Case No. 09-01309 at 4 (App. Bd. Apr. 29, 2010) (Failure to discharge debts is a continuing course of conduct, precluding a finding that they are too old to have security significance). 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'an

Michael Ra'an
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields

¹Applicant's brief makes repeated reference to his unsuccessful efforts to find an attorney. To the extent that he is asserting that his ability to present his case was impaired by the absence of counsel, we note that he was properly advised of his right to representation. He was also advised of his right to submit matters in response to the File of Relevant Material yet failed to do so. *Pro se* applicants are not expected to act like lawyers but are expected to take reasonable steps to protect their interests. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014). There is no reason to believe that Applicant was denied due process. *See, e.g.*, ISCR Case No. 12-02296 at 3 (App. Bd. Mar. 12, 2014).

William S. Fields
Administrative Judge
Member, Appeal Board

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