

KEYWORD: Guideline F

DIGEST: The Judge’s material findings were supported by substantial evidence. The Appeal Board cannot consider new evidence on appeal. Hearing Office decisions are not binding precedent. Applicant failed to rebut the presumption that the Judge considered all of the evidence. The Judge considered non-alleged conduct for limited purposes consistent with Appeal Board precedent. Adverse decision affirmed.

CASE NO: 12-04293.a1

DATE: 11/24/2014

DATE: November 24, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-04293
)	
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 February 26, 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 August 21, 2014, after the hearing, 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 issues on appeal: whether the Judge's findings of fact contained errors; whether the Judge considered all of the evidence; 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 is employed by a Federal contractor and has worked for Federal contractors since 2011. He served in the U.S. military from 1977 to 1981. He received a security clearance in 2004. He enjoys an excellent reputation for the quality of his duty performance. Applicant and his wife have no children from their marriage. However, Applicant's two adult stepsons live with him, as does his teenage grandson.

Applicant's SOR alleged four delinquent debts, three of which the Judge resolved against Applicant. Two of the adverse findings were for time-share vacation homes. Applicant purchased the first of these in the mid-1990s, his payments becoming delinquent about a year after purchase. He made no effort to resolve this debt until he received the SOR.

Applicant and his wife filed for Chapter 7 bankruptcy protection in 2002 and were discharged the following year. He testified that a major reason for his bankruptcy is that he had assumed responsibility for the care of his grandson, which entailed added expenses. The time-share debt was not included in the bankruptcy action.

Applicant purchased a computer for his grandson in 2006 or 2007. He could not afford the payments, so he stopped making them soon after the purchase. The creditor charged off this debt and referred it to collection. In 2007, Applicant purchased another time-share. He stopped making payments soon thereafter. He settled this debt in March 2014. He testified that the purchase was a "pressure sale." Decision at 3.

Applicant submitted a personal financial statement in his response to DOHA interrogatories. Among other things, this document shows debt payments to the IRS for taxes owed in 2009. He testified that he also owes taxes for tax years 2011 and 2012 due to insufficient withholding. The tax debts are not alleged in the SOR, nor was the bankruptcy petition. The Judge stated that he was considering these debts in evaluating Applicant's credibility, his case for mitigation and/or rehabilitation, and for the whole-person analysis.

During his clearance interview, Applicant discussed his bankruptcy and his more recent time share debt. He did not recognize several of the debts listed in his credit report, although he later demonstrated that he had resolved or disputed a number of debts not alleged in the SOR.

After receiving the SOR, Applicant borrowed money from his retirement account and used it for debt resolution. He demonstrated that he had resolved both time share debts, but, as stated above, he did not corroborate his claim that the computer debt had been paid.

The Judge's Analysis

Although the Judge cleared Applicant for a debt arising from an automobile loan, he concluded that Applicant had not mitigated the concerns arising from the two time share properties and the computer debt. He stated that Applicant did not take action to resolve these debts until he had received the SOR, that he addressed his delinquencies by taking on new debt in the form of a loan from his retirement plan, and that he had not received financial counseling except to the extent required by bankruptcy law. The Judge stated that payments motivated by pressure to qualify for a clearance do not show sufficient prudence or adherence to duty as to constitute good-faith efforts to resolve debts.

In the whole-person analysis, the Judge noted Applicant's military service to the U.S. and that he has held a clearance for several years. He also noted that Applicant has been generous to his stepsons and grandson. However, the Judge stated that Applicant had demonstrated bad financial judgment, making purchases that he could not afford. He cited to evidence that Applicant had bought the second time share during a time of financial trouble and that he had bought the computer soon after he had surrendered his automobile due to missed payments. He again noted that Applicant had begun addressing his debts only after having received the SOR.

Discussion

Applicant challenges a number of the Judge's findings of fact, citing evidence that provides context for them. Among other things, he asserts that the computer debt has been resolved. We have considered Applicant's arguments in light of the record. The Judge's finding about the computer debt is consistent with the record that was before him. Even if this finding were erroneous, it did not likely affect the overall disposition of the case. After considering the totality of Applicant's arguments, we conclude that the Judge's material findings of security concern are supported by substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 13-12407 at 4 (App. Bd. Aug. 18, 2014). Applicant has not cited to any harmful error in the Judge's findings.

Applicant submitted new evidence with his appeal brief. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

To the extent that Applicant is arguing that the Judge did not consider favorable record evidence, such as the expense he has undergone as result of caring for his grandson and his efforts at debt resolution, we note that a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-00723 at 3 (App. Bd. Feb. 4, 2014). The Judge made explicit findings about much of the evidence Applicant has cited. Applicant's argument on appeal is not sufficient to rebut the presumption that the Judge considered all of the evidence, nor does it show that the Judge mis-weighed the evidence.

Applicant cites to other Hearing Office cases, arguing that they support his effort to obtain a clearance. We give these cases due consideration. However, Hearing Office decisions are not

binding on other Hearing Office Judge's or on the Appeal Board. *See, e.g.*, ISCR Case No. 12-04508 at 3 (App. Bd. Aug. 21, 2014). Applicant argues that his duties do not actually require him to view classified information. We do not have authority to rule on this matter. Our jurisdiction is limited to those issues set forth in Directive ¶ E3.1.32.

Applicant challenges the Judge's consideration of non-alleged conduct, such as the bankruptcy action and the IRS debt. The Judge stated that he was considering these matters for the limited purposes set forth in our prior cases. *See, e.g.*, ISCR Case No. 10-03598 at 3 (App. Bd. Oct. 10, 2012). We find no reason to believe that the Judge treated this evidence in any other way.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The Judge properly considered both the circumstances underlying Applicant's financial problems as well as evidence that his payments post-date the SOR. *See, e.g.*, ISCR Case No. 11-12803 at 3 (App. Bd. Feb. 21, 2014) (In Guideline F cases a Judge should consider the reasons for an applicant's financial problems as well as his or her efforts to resolve them); ISCR Case No. 12-00734, *supra*, at 4 (Timing of debt repayment is relevant in Guideline F cases). "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