

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 12-08417.a1

DATE: 06/24/2015

DATE: June 24, 2015

In Re:)	
)	
-----)	ISCR Case No. 12-08417
)	
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 May 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) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 15, 2015, after considering the record, 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 in the U.S. military, from which he was discharged with a General Discharge Under Honorable Conditions (General) for misconduct. He has several delinquent debts, and, in addition, he misused a Government credit card and uttered a check without sufficient funds. For this last incident he was fined. He told his clearance interviewer that he misused the Government card on two separate occasions. He received non-judicial punishment, consisting of a reduction in rank and forfeiture of pay. Applicant stated that he had paid several of his debts and had entered into a payment plan for others, although the Judge found that he had provided no corroborating evidence.

The Judge’s Analysis

The Judge stated that Applicant had provided no reason for his delinquent debts and that he had not demonstrated responsible action in regard to them. She stated that he has known about the debts since 2012 but produced no documentation of a plan to resolve the majority of them. In the whole-person analysis, the Judge cited to evidence of Applicant’s having been discharged from the military with a General discharge, as well as to his disciplinary actions while in the service. She reiterated her observation that Applicant had not corroborated his claim to have entered into payments plans. She also noted that there is no evidence in the record to show that Applicant paid the fine that was imposed on him due to the bad check offense.

Discussion

Applicant cites to some Hearing Office cases that he believes are similar to his and in which the applicants received clearances. We have given these cases due consideration. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03223 at 2 (App. Bd. Apr. 17, 2015). The cases that Applicant has cited have significant differences from his own. They are not enough to show that the Judge erred in her adverse decision.

Applicant argues that the Judge did not consider all of the relevant and material information. However, a Judge is presumed to have considered all of the evidence in the record. Applicant has

not rebutted this presumption, nor has he shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 12-01578 at 5 (App. Bd. Sep. 24, 2014).

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: 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