

KEYWORD: Guideline F

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

CASENO: 12-09921.a1

DATE: 12/09/2015

DATE: December 9, 2015

In Re:)	
)	
)	
)	ISCR Case No. 12-09921
)	
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 March 14, 2015, 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 September 23, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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 in the record 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 and his wife divorced in 2011, after which Applicant was not able to pay the mortgages on a house that they owned. The house was financed with two mortgages. He had a short sale of the house the following January. However, even after this sale, they owed over \$182,000. Applicant attempted to settle the debt for \$10,000, to be paid in monthly installments each of \$75 from both himself and his ex-wife. The lender rejected this offer, requiring payment of at least 25% of the debt, which would be \$45,000. Applicant claimed that he could not pay this much. Applicant provided no information about his salary or assets, how much of a down payment he had made on the house, or other relevant financial information.

Applicant's credit reports show that he owes other debts and pays them. For example, he purchased a car for \$36,000 and has about \$42,000 in student loans. He also has about \$11,000 in credit card debt. "Applicant continued to spend money while he claimed he was unable to repay his mortgage." Decision at 3.

The Judge's Analysis

The Judge stated that Applicant had not provided information about his income in 2012 or at the present, nor did he disclose the sale price of his house. He stated that, if Applicant were able to make payments on a \$36,000 car he should be able to make the payments needed to meet the settlement amount required by the lender. He stated that Applicant's claims that he cannot pay his mortgage are not persuasive evidence of financial inability. In the whole-person analysis, the Judge stated that Applicant had taken no action on the mortgage debt since 2012, leaving him vulnerable to pressure, exploitation, or duress. His lack of action on this debt is ongoing and voluntary.

Discussion

Applicant contends that the Judge failed to consider all of the evidence in the record. Among other things, he argues that the Judge did not consider that Applicant's divorce precipitated his financial problems and that he had made efforts to resolve the debts. The Judge made findings about Applicant's divorce and about his offer to settle the debt. Given the record that was before him, the Judge's treatment of this evidence is supportable. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06359 at 3 (App. Bd. Nov. 6, 2015). Applicant has cited to some Hearing Office cases that, he argues, lend force to

his effort to obtain a favorable result. We have considered these cases as persuasive authority. However, Hearing Office cases are not binding on us or on other Hearing Office Judges. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

The Judge examined the relevant evidence 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