

KEYWORD: Guideline F

DIGEST: Hearing Office cases are not binding on other Hearing Office Judges nor on the Appeal Board. Furthermore the cited cases differ factually from the case before the Board. Adverse decision affirmed.

CASENO: 13-00464.a1

DATE: 02/20/2014

DATE: February 20, 2014

In Re:)
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-----) ISCR Case No. 13-00464
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Applicant for Security Clearance)
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Curtis C. Van de veld, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 10, 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 hearing. On November 27, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 failed to consider all of the record evidence and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge’s Findings of Fact

Applicant has held a security clearance in connection with his job since 2005. He enjoys an excellent reputation for the quality of his work and for his dedication.

The Judge found against Applicant on three delinquent debts. One of the three that the Judge found against Applicant is a bad debt to a credit union that is being repaid through an involuntary allotment. The other two debts are entirely unresolved. Together they have a value in excess of \$15,000. Applicant’s attorney has initiated negotiations on one of the debts but no payments have been made.

Applicant stated that his problems arose due to his having trusted his wife with managing the family finances. Applicant’s wife had a gambling addiction of which Applicant was unaware, and she went into debt. Arrested for theft from her employer, she lost her job. Although she eventually told Applicant about her addiction, she hid from him the extent of their indebtedness. She continued to manage the family finances even after she was released from jail. Applicant only became aware of their debts when he completed his security clearance application (SCA).

Although he considered filing for Chapter 7 bankruptcy protection, he decided instead to hire an attorney to advise him on debt resolution. This attorney began negotiating with Applicant’s creditors, and he discussed with Applicant ways to avoid future debts.

Applicant’s wife inherited \$35,000, testifying that she would use the money to pay off the family debts. However, Applicant and his wife have, apparently, abandoned that plan. Instead they recently filed for Chapter 13 bankruptcy protection. Applicant has \$376.72 left over after meeting his monthly expenses. He has resolved several large debts that were not listed in the SOR.

The Judge’s Analysis

The Judge concluded that Applicant’s circumstances raised concerns under Guideline F. In further concluding that Applicant had failed to mitigate those concerns, the Judge cited to evidence that Applicant’s wife continued to make financial decisions for the family, even after she had been released from jail. She stated that Applicant demonstrated little knowledge of his financial situation, even during his hearing testimony. The Judge also stated that Applicant had failed to demonstrate

efforts to prevent financial mismanagement in the future. Though acknowledging that Applicant's financial problems were affected by circumstances outside his control, she concluded that Applicant had not addressed his problems in a reasonable way. She noted that he had decided to file for Chapter 13 bankruptcy protection, but he presented no evidence of a court-approved plan. The Judge concluded that Applicant had not demonstrated that his problems were in fact being resolved. The Judge also acknowledged that Applicant had paid some non-SOR debts, but she stated that he had not taken sufficient action on his remaining accounts to show a good-faith effort to pay his debts. She concluded that Applicant's presentation at the hearing essentially constituted a promise to pay off debts in the future.¹

In the whole-person analysis, the Judge acknowledged evidence of Applicant's excellent work performance. She stated, however, that he had failed to present sufficient evidence of debt resolution to mitigate the security concerns raised in the SOR. She stated that his having held a clearance since 2005 should have put him on notice of the significance of financial delinquencies in evaluating an applicant's fitness for a clearance. She stated that he had disregarded this concern until recently, having previously left his finances in his wife's hands.

Discussion

Applicant's brief cites to his having paid off several debts not alleged in the SOR, his wife's effect on his finances, and his lack of knowledge of the extent of his problems until confronted with a credit report in connection with his current SCA. He states that he has taken efforts to resolve two of the debts that the Judge found against him. To the extent that he is arguing that the Judge failed to consider this evidence, we note that the Judge made findings about Applicant's circumstances, including those addressed in his appeal brief. We find no reason to disturb her treatment of this evidence or to conclude that she extended undue weight to adverse evidence to the detriment of that which was favorable. To the contrary, the Judge's decision is consistent with the weight of the record evidence before her. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012). Neither has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 10-07881 at 2 (App. Bd. Oct. 5, 2012).

Applicant cites to some Hearing Office cases that, he contends, support his case for a security clearance. These cases have some similarity with Applicant's own, such as those in which the applicant paid off non-SOR debts and/or in which the applicant sought to communicate with his creditors. We have given these cases due consideration as persuasive authority. However, Hearing Office cases are binding neither on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 11-10178 at 3 (App. Bd. Aug. 29, 2013). The cases that Applicant has cited have significant factual differences from his own and are not sufficient to demonstrate that the Judge's decision was erroneous. We note, for example, evidence that Applicant only recently began to

¹*See*, ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010) ("Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner").

address his financial problems or, indeed, even became aware of their full extent. We also note the extent to which Applicant permitted his wife to handle their finances even after she had been convicted for theft and Judge's comment about the equivocal nature of Applicant's plans to address his debts. Moreover, we conclude that the Judge's whole-person analysis sufficiently addressed the totality of Applicant's conduct and circumstances so as to satisfy the requirements of the Directive. *See, e.g.*, ISCR Case No. 08-09511 at 2 (App. Bd. Mar. 3, 2010).

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 Y. Ra'anan
Michael Y. 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