

KEYWORD: Guideline F

DIGEST: Credit reports are normally sufficient to meet the substantial evidence standard.
Adverse decision affirmed.

CASENO: 14-00597.a1

DATE: 07/16/2015

DATE: July 16, 2015

In Re:)
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-----) ISCR Case No. 14-00597
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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

Chuck M. Douglas, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 15, 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 April 9, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 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's SOR alleges numerous delinquent debts. One is a collection account for more than \$8,000 that was charged off, its current status listed as "Closed-Cancelled." Decision at 3. Another SOR debt was for a charged-off second mortgage for more than \$32,000 pertaining to a condo that had gone into foreclosure. Applicant provided a letter from an attorney stating that he was disputing this debt (along with others) and was prepared to file a legal action to resolve it. The attorney stated that he had enjoyed considerable success in similar cases and anticipated a favorable result in Applicant's. This letter also disputed debts resulting from a bank loan and a credit card account.

Applicant began a business in 1980, which peaked 10 years later with gross income of about \$18,000,000. However, in the mid-2000s, his business suffered during an economic downturn. He attempted to sell some of his real estate holdings, but he was not successful in doing so. At least one of his properties went into foreclosure. Applicant's business rebounded, though he lost a major DoD contract in 2014. Applicant's adjusted gross income in 2012 was over \$2,500,000 and in 2013 was over \$1,000,000. He has personal assets of about \$2,500,000 and his interest in his business has a value of about \$3,500,000. After his business fortunes improved, Applicant hired an attorney and a CPA to help him with his financial problems. Dissatisfied with their progress, he terminated his arrangement with them and hired another, larger, CPA firm. However, Applicant's post-hearing submissions include letters from the attorney indicating that he was still providing assistance.

The Judge's Analysis

The Judge resolved several of the SOR debts in Applicant's favor. For those referenced above, however, he concluded that Applicant had not met his burden of persuasion. He cited to evidence of Applicant's personal wealth; Applicant's reliance on the "charged off" status of one of the debts, a circumstance that the Judge found fell short of a "good faith" effort to pay; a lack of evidence of the reasons for Applicant's disputes of several of the debts; and a lack of evidence of actual dispute letters having been filed with various creditors. The Judge concluded that Applicant's financial difficulties continue to cast doubt upon his fitness for a clearance. In the whole-person analysis, the Judge stated that Applicant had the resources to resolve his debts but that what efforts he had made had yielded scant results.

Discussion

Applicant challenges some of the Judge’s findings of fact. We examine a Judge’s findings to see if they are supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See also* ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012). Applicant contends that the Judge erred in findings regarding the legitimacy and amounts of some of the SOR debts. He argues that the Judge’s findings are based simply on a credit report, which he believes to be inaccurate. He also cites to record evidence that provides some context to Applicant’s financial condition. We note first of all that credit reports are normally sufficient in and of themselves to provide substantial evidence of Guideline F security concerns. *See, e.g.*, ISCR Case No. 11-00046 at 2 (App. Bd. Feb. 10, 2012). In any event, in the case before us, the Judge’s findings were based not only on Applicant’s credit report but on his clearance interview, his hearing testimony, and the exhibits he submitted in his own behalf. We have examined the Judge’s material findings of security concern and conclude that they are based upon substantial evidence or constitute reasonable inferences from the evidence. Applicant’s citation to various pieces of evidence, such as his testimony and documentary evidence about his disputes of the amounts or legitimacy of his debts, are not sufficient to rebut 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). Applicant’s alternative interpretation of the evidence is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-01080 at 3 (App. Bd. Apr. 24, 2015).

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 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