

KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all the evidence. In this case the Judge discussed the evidence that Applicant believes was ignored. Adverse decision affirmed

CASENO: 14-01077.a1

DATE: 09/18/2015

DATE: September 18, 2015

In Re:)
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 -----) ISCR Case No. 14-01077
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)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 7, 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 June 29, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr. denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant is 34 years old. She admits to having 11 delinquent accounts totaling nearly \$34,000. She also admits not filing her 2008 and 2012 state income tax returns. However, she denies not filing her 2012 Federal income tax return. Her debts became delinquent between May 2011 and August 2013. Applicant dates her financial problems to 2011 when her second child was born, after which she was out of the work force on disability for a time and then worked for a subsequent time at a much lower salary rate. She also attributed her trouble to the Government shutdown in October 2013, when her husband received no salary. She acknowledged that her husband was eventually paid for time lost, but the money was used for other bills instead of keeping up with mortgage payments and the other debts listed in the SOR.

Applicant began earning more than \$80,000 per year in late 2013 and has been earning over \$100,000 per year since 2014. Her husband earns more than \$80,000 per year. Applicant paid a \$200 debt after the SOR was issued. Along with her husband she began paying the IRS \$200 a month in 2014. The couple entered into a loan modification plan on their mortgage with payments to begin in late 2014. Applicant claims that she has been unable to locate the creditors on three medical debts. She has not resolved those debts, or any of the four remaining debts, plus a state income tax filing. Applicant attributes her failures to file state and Federal income tax returns, and the ensuing tax liabilities to confusion about how to account for their move between states and her husband's transition from military to civilian employment. She acknowledges that she and her husband just did not get around to filing their state income tax return for 2012.

The Judge concluded: Between at least April 2013 and May 2014, when she received the SOR, Applicant took no action to resolve the SOR debts, despite clearly possessing the means to do so. With the possible exception of the mortgage, Applicant documented no communications with her creditors until after the SOR was issued. Her financial difficulties are recent, not infrequent, and are ongoing. The circumstances she cites as the cause of her indebtedness can be considered largely beyond her control, but she cannot be considered to have acted responsibly under the circumstances, because she took no action to resolve her debts until she received the SOR. Her recent start of a repayment plan on her mortgage has not continued long enough to consider it a good-faith effort to resolve indebtedness. At least seven of her debts remain completely unaddressed. She has not received credit or financial counseling. Applicant has not demonstrated that these delinquent debts are being resolved in an expeditious manner.

Applicant contends that the Judge did not consider all of the evidence in the record, citing to evidence that the birth of her second child adversely affected her finances and the evidence also

showed that she had resolved some of her debts. A Judge is presumed to have considered all the evidence of record. *See, e.g.*, ISCR Case No. 12-01578 at 4 (App. Bd. Sep. 24, 2014). Applicant has not rebutted this presumption. The evidence that Applicant argues the Judge ignored is specifically discussed in his decision. Applicant’s citation to favorable evidence is not enough 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. 14-00998 at 5 (App. Bd. Mar. 19, 2015).

Applicant argues that because she is trustworthy and has made arrangements or has successfully satisfied some of the debts, thus indicating her ability to satisfy the remaining debts, the concerns under Guideline F are largely inapplicable. However, evidence of Applicant’s ongoing debts and her dilatory efforts at addressing them are sufficient to raise Guideline F concerns. The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s worthiness for a clearance. *See, e.g.*, ISCR Case No. 12-01295 at 3 (App. Bd. Jan 20, 2015).

The Board gives due consideration to the Hearing Office cases that Applicant has cited. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 13-01297 at 2-3 (App. Bd. Mar. 9, 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 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 of the Judge 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