

KEYWORD: Guideline F

DIGEST: The record of Applicant's financial problems supports the Judge's ultimate conclusion. Adverse decision affirmed.

CASENO: 14-01526.a1

DATE: 07/02/2015

DATE: July 2, 2015

In Re:)	
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)	ISCR Case No. 14-01526
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Robert A. Garrison, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 6, 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 March 27, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White 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 is an employee of a Defense contractor. He retired from the military in 1995 and has worked continuously since. Married with four minor children, he and his wife are informally separated. Applicant also has two stepchildren. 58 years old, Applicant has held a security clearance almost all of his adult life.

Applicant’s SOR lists 11 allegations of delinquent debt, although the Judge found that two of these debts were repeats of two others. Nevertheless, even after taking this into account, he found that Applicant’s debts total \$21,206. Applicant admitted all of the debts listed in the SOR.

Although Applicant testified that he did not recall any delinquent debts prior to and during the investigation of his last security clearance application during 2002 and 2003, Government exhibits showed several past due accounts that, in 2002, he claimed to have settled or resolved.

Applicant’s wife handled the finances for the family, and their delinquent debts resulted from her failure to pay them, without Applicant’s knowledge. Applicant provided her with sufficient funds to have made the payments. Applicant’s wife claimed that depression plus serious problems involving members of her family caused her to become unable to manage the finances. Applicant first became aware of his wife’s failure to pay bills when he discovered a foreclosure notice on his garage door while he was shoveling snow.

After this discovery, Applicant took over the finances. In addition, he moved to a separate residence and initiated divorce proceedings. In a 2013 interview with a clearance investigator, Applicant stated that the divorce was prompted by his wife’s infidelity. He did not mention finances as constituting a reason for the separation and establishment of two households.

Applicant told his interviewer that he intended to file for bankruptcy as a means of resolving his debts. He repeated this intention in an answer to subsequent DOHA interrogatories. Applicant and his estranged wife filed for Chapter 7 bankruptcy protection in 2014, the petition listing \$44,659 in unsecured debts. Many of these debts were incurred after their separation. They were discharged

later in 2014. Applicant submitted two documents outlining his financial condition. One of them showed a monthly remainder of \$436 and the other a monthly remainder of \$165.

Applicant enjoys an excellent reputation for supporting his family, his prompt payment of rent after moving away from the family home, and his efforts to pay all of the bills associated with maintaining two households. His character witnesses agree that he is hardworking, thrifty, reliable, honest, and patriotic.

The Judge's Analysis

In concluding that Applicant had not mitigated the security concerns in his case, the Judge cited to evidence that Applicant remains the sole source of income for his wife and children. His financial condition worsened by his move to a different residence. The Judge concluded that Applicant's living estimates are unreasonably low when one takes into account the number of family members who rely on him for support. The Judge also concluded that Applicant's problems did not result from circumstances outside his control, insofar as he voluntarily left his wife, moved to a separate address, and yet took no steps toward divorce and remains liable for the family debt. The Judge stated that Applicant took no action in regard to his financial problems until his security clearance became endangered. He has not undergone financial counseling save what was required for his bankruptcy. The Judge also cited to evidence of Applicant's financial problems in 2002 and 2003.

In the whole-person analysis, the Judge described Applicant as patriotic, hardworking, thrifty, and mature. On the other hand, the Judge stated that Applicant had assumed a large and growing financial burden. The Judge concluded that these matters constitute an ongoing potential for pressure or duress. The Judge concluded that the record left him with "substantial doubt as to Applicant's present eligibility and suitability for a security clearance[.]" Decision at 7.

Discussion

Applicant's brief quotes extensively from his wife's testimony and testimony of other witnesses. He argues that he was not responsible for the debts, and, once he discovered the true nature of his financial condition, took steps to resolve his problems. He also cites to his witnesses's belief that he is a person who can be trusted with classified information. The Judge made findings about Applicant's circumstances and his character evidence, discussing these things in his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-01443 at 2 (App. Bd. Apr. 28, 2015). As Department Counsel contends in his Reply Brief, Applicant's argument on appeal amounts to a disagreement with the Judge's weighing of the evidence, which is not enough to undermine the Judge's overall conclusions. *See, e.g.*, ISCR Case No. 12-05113 at 4 (App. Bd. Dec. 30, 2014).

Applicant argues that the record is devoid of evidence of criminal practices, illegal financial transactions, unexplained affluence, etc. To the extent that he is arguing that Applicant's financial problems do not raise security concerns, we note that Guideline F contemplates more than that an

applicant may be tempted to compromise classified information in order to obtain funds to pay his debts. Rather, it also requires a Judge to examine the applicant's circumstances for what they may reveal or suggest about the applicant's judgment, reliability, and other characteristics expected of those entrusted with access to national secrets. *See, e.g.,* ISCR Case No. 14-03392 at 3 (App. Bd. Apr. 15, 2015). In this case the Judge's findings about Applicant's financial problems in the early 2000s, the extent of his current and ongoing delinquencies, and evidence that his problems became worse even after separating from his wife support his overall adverse decision.

Applicant cites to general factors set forth near the beginning of Enclosure 2 of the Directive, asserting that the Judge failed to apply them. The Judge applied the specific disqualifying and mitigating conditions of Guideline F to the facts of the case. He then discussed, in a separate whole-person analysis, the general factors that Applicant has cited. A Judge is not required to draft a decision in any particular way. In this case, we conclude that the Judge fairly considered and applied all pertinent aspects of the Directive.

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