

KEYWORD: Guideline F

DIGEST: The Directive does not allow the Board to consider the impact of an unfavorable decision. Adverse decision affirmed.

CASENO: 14-02041.a1

DATE: 08/17/2015

DATE: August 17, 2015

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In Re: )  
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 ----- ) ISCR Case No. 14-02041  
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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**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 2, 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 May 12, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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Applicant raised the following issues on appeal: whether the Judge's decision was based upon outdated evidence and whether the decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant has worked for a Defense contractor for six years. Much of the debt alleged in the SOR resulted from medical problems he experienced in 2009. The Judge found that, despite having been given time in which to resolve these debts, he had not addressed them.

### **The Judge's Analysis**

The Judge resolved some of the allegations in Applicant's favor, including a large debt for a vehicle. However, he resolved the majority of the SOR allegations, which resulted from Applicant's medical treatment, against him. He stated that Applicant had failed to act responsibly, in that, having been given four months to pay these debts, he had yet to act on them.<sup>1</sup> The Judge stated that Applicant had about \$2,400 in past-due debt that he had yet to address.

### **Discussion**

Applicant contends that the Judge based his conclusions on outdated credit reports. He stated that the interest on the debts makes them higher than the amount of the original obligations. We note, first of all, that the Government's burden of producing evidence of security concern arises only with regard to allegations that have been controverted. Directive ¶ E3.1.14. In this case, Applicant admitted all of the allegations that the Judge found against him. Therefore, these allegations were not controverted, and the Government bore no burden of production as regards to them. Insofar as Applicant denied some of the allegations, the Government produced evidence in the way of Applicant's security clearance application; two full credit reports, dated November 2008 and December 2013; and two one-page credit summaries from a reporting agency, dated November 2014 and January 2015. These documents included information not only about the controverted allegations but about those Applicant had admitted as well. These admissions alone, but especially when viewed in conjunction with the evidence the Government produced, were sufficient to shift to Applicant the burden of presenting evidence in mitigation. Directive ¶ E3.1.15. *See also* ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012). Applicant submitted a number of documents to

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<sup>1</sup>The Decision does not explain the significance of four months, although we note that that was the period of time that elapsed between the dates of the SOR and of the hearing. We also note that the Judge held the record open for three months after the hearing, until April 23, 2015, to enable Applicant to submit additional evidence.

the Judge, including evidence showing that he had paid certain debts, performance evaluations from his job, etc. If he believed that more up-to-date evidence about the allegations was required, it was his responsibility to provide it. *See, e.g.*, ISCR Case No. 14-00434 at 3 (App. Bd. Jan. 20, 2015). We note that, at the close of the hearing, when asked if he had additional matters to address, Applicant replied, “No, everything seems good.” Tr. at 43. Nowhere in the documents that he submitted after the hearing did Applicant refer to the possibly outdated nature of the credit reports. Considering the record that was before the Judge, we find no factual error concerning the extent and nature of Applicant’s debts. To the extent that this assignment of error is a challenge to the Judge’s findings, we conclude that the material findings of the Judge are based upon substantial evidence. *See, e.g.*, ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012).

In presenting his case on appeal, Applicant refers to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant cites to his having held a clearance for many years without incident or concern, as well as to evidence of his good work performance. Applicant’s argument is not sufficient to rebut the presumption that the Judge considered all of the evidence. Nor is it sufficient to show that the Judge mis-weighted the evidence. *See, e.g.*, ISCR Case No. 12-00723 at 3 (App. Bd. Feb. 4, 2014). Applicant also notes that a clearance is a requirement for his continued employment. The Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-01443 at 2 (App. Bd. Apr. 28, 2015).

Given the record that was before him, 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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board