

KEYWORD: Guideline F

DIGEST: Applicant cites to favorable evidence but has not demonstrated that the Judge weighed the evidence in a manner that was arbitrary capricious or contrary to law. Adverse decision affirmed.

CASENO: 14-03247.a1

DATE: 07/17/2015

DATE: July 17, 2015

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In Re: )  
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 ----- ) ISCR Case No. 14-03247  
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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 1, 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 7, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 has worked for a Defense company for about 20 years. He has a good employment record, and his annual compensation is about \$52,000. He has held a security clearance for many years. He and his wife have three adult children, the youngest of whom is attending college. Applicant is assisting with college expenses. Applicant’s wife recently got laid off from her employment, but she received a severance package of six months of pay.

Applicant’s SOR alleges four delinquent debts: two charged-off accounts, an unpaid judgment, and a past-due mortgage loan. Applicant stated that he paid off four collection accounts not alleged in the SOR. He has paid off a car loan, and his wages are being garnished by the IRS for repayment of back taxes. The tax debt was not alleged in the SOR either. Applicant paid or settled the two charged-off accounts.

At the hearing, Applicant testified that the judgment had been the subject of a garnishment. However, when the IRS began garnishing his wages for his tax debt, the previous garnishment action stopped. Applicant submitted no documentation regarding the unpaid judgment.

Applicant’s mortgage debt originated from his having refinanced his house with an interest-only loan, that he later found to be too expensive. He sought to refinance, but the two loan proposals that his bank offered him were not acceptable. An attorney advised Applicant to stop making payments on his mortgage in order to persuade the lender to refinance on more favorable terms. Applicant followed this advice, and the lender foreclosed. The lending institution itself was closed by the Office of Thrift Supervision, and all deposits and loans were transferred to another bank. Applicant has received no documentation about the status of the foreclosure sale, including an IRS Form 1099.

Applicant stands to inherit nearly \$100,000 from his father’s estate. He has received about \$20,000 and expects the balance by the end of 2015. He will use this money to pay off his debts. Applicant provided no documentation concerning the inheritance.

### **The Judge’s Analysis**

The Judge resolved the two paid debts favorably to Applicant. However, he concluded that Applicant had not mitigated the concerns arising from his mortgage delinquency and the judgment. He concluded that Applicant's plan to pay these debts from an expected inheritance was too speculative to establish that his debts are under control. He stated that other than garnishment, Applicant has done little to resolve his debts.

### **Discussion**

Applicant cites to evidence concerning the extent to which his debts have been resolved. His argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record or that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-00273 at 3 (App. Bd. Feb. 4, 2014). Applicant's brief includes matters not contained in the record, which we cannot consider. Directive ¶ E3.1.29. Applicant argues that the evidence is not consistent as to the amount he still owes on the judgment. To the extent that he is challenging the Judge's findings of fact, we conclude that the findings are based on substantial evidence or constitute reasonable inferences from the evidence. Applicant has cited to no error likely to change the outcome of the case *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

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