

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASE NO: 14-03754.a1

DATE: 03/15/2015

DATE: March 19, 2015

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In Re:	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 5, 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 decision on the written record. On January 8, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance.<sup>1</sup> Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

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<sup>1</sup>The Record copy of the Decision is missing page 7. The Appeal Board obtained the page from the DOHA web site.

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 been employed by a Defense contractor since early 2013. He has been constantly employed since 2002. He has several delinquent debts, for a line of credit, loans, etc. The Judge found that he had resolved only one of the nine SOR debts. Applicant has hired a credit consultant to assist him in correcting inaccuracies in his credit reports. The firm began addressing Applicant's problems in 2012.

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

The Judge stated that Applicant had not presented evidence of having contacted creditors. He noted that Applicant had supplied no evidence that his financial problems were the result of circumstances beyond his control, such as an economic downturn, unexpected medical expenses, etc.<sup>2</sup> He also stated that the credit consulting firm did not advise whether it was providing Applicant with advice or assistance concerning his financial situation. The Judge stated that the mere fact that some of Applicant's debts were beyond the statute of limitations was not a basis for concluding that he had initiated a good-faith effort to pay them. In the whole-person analysis, the Judge noted that Applicant had not submitted any sort of character evidence. He said that the likelihood that the SOR debts are no longer collectible does not relieve Applicant of his obligation to resolve them.

### **Discussion**

Applicant cites to his favorable evidence, such as his credit counseling firm and the successful resolution of one of the debts alleged in the SOR. The Judge made findings about this evidence. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he made a persuasive argument that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-10255 at 5 (App. Bd. Jul. 28, 2014).

Applicant has cited to some Hearing Office decisions in his Appeal Brief. We give these decisions due consideration as persuasive authority. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-00279 at 3 (App. Bd. Jan. 23, 2015). The decisions that Applicant has cited do not demonstrate that the Judge erred in his analysis of Applicant's circumstances.

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

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<sup>2</sup>Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation,) and the individual acted responsibly under the circumstances."

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: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board