

KEYWORD: Guideline F

DIGEST: We have no authority to grant interim, conditional or probationary clearances.
Adverse decision affirmed.

CASENO: 14-04289.a1

DATE: 09/09/2015

DATE: September 9, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-04289
)	
)	
Applicant for Security Clearance)	
_____)	

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 10, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 30, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Claude R. Heiny 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 weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline H are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Decision

The Judge made the following findings that are pertinent to the issue raised on appeal. Applicant works for a Defense contractor. In the mid-2000s, he entered into a partnership for the purpose of investing in real estate. A subsequent hurricane resulted in an increase in insurance rates, and the crash of the housing market impaired Applicant’s business fortunes. He sold two of the lots that he had purchased and borrowed from his individual retirement account in order to make his mortgage payments. Applicant’s partner also became unable to invest in the partnership.

Applicant states that, in July 2013, he filed for bankruptcy protection. A letter from his lawyer stated that they expected to file in late 2014 and, in response to the File of Relevant Materiel, another such letter stated that they would file in mid-2015. Applicant submitted no filing documents.

The Judge’s Analysis

As stated above, the Judge entered favorable findings regarding the Guideline H allegations. In arriving at the opposite conclusion for Guideline F, he stated that Applicant had presented no evidence of having paid his debts or of having filed for bankruptcy protection. Neither had he submitted evidence of financial counseling. The Judge noted that circumstances outside Applicant’s control affected his finances. However, he concluded that Applicant had failed to show responsible action in regard to his debts.

Discussion

Applicant cites to evidence that he has a steady work history and problem-solving ability. He argues that his job requires him to enforce access guidelines, which he cites as proof of his security-worthiness. This argument is not enough to undermine the Judge’s weighing of the evidence. The presence of some mitigating evidence does not compel a favorable decision or show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00480 at 4 (App. Bd. Jul. 2, 2015). Applicant’s argument is not

sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-00597 at 3 (App. Bd. Jul. 16, 2015).

Applicant asks that he be granted an additional six to twelve months to resolve this debt problems. We do not have authority to grant an interim, conditional, or probationary clearance. *See, e.g.*, ISCR Case No. 10-06975 at 2 (App. Bd. Apr. 19, 2012). Applicant notes that because of his loss of a clearance he is no longer working. The Directive does not permit us to consider the adverse impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-01443 at 2 (App. Bd. Apr. 28, 2015).

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