

KEYWORD: Guideline f

DIGEST: The Board concludes that the Judge’s material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. Adverse decision affirmed.

CASENO: 14-04839.a1

DATE: 05/27/2016

DATE: May 27, 2016

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| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 14-04839 |
|                                  | ) |                        |
| 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 March 4, 2015, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 10, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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, who is in his late 30s, owns a company that is a Federal contractor. He testified that his highest annual compensation from his company was approximately \$125,000 and his current monthly earnings are about \$6,000. His references have high opinions of his character.

In a security clearance application submitted in September 2013, Applicant listed that he was past-due about \$3,500 on a mortgage loan. He did not list any other negative financial information in response to questions that asked whether he had any judgments, liens, foreclosures, or collection accounts in the last seven years. During a background interview in December 2013, he denied having judgments, liens, foreclosures, or collection accounts. When the investigator questioned him about delinquent debts totaling over \$180,000, he claimed he was either unaware of the debts or was in the process of resolving them. At the hearing, he claimed that he was unaware of these debts until he received the SOR in 2015.

During the background interview, Applicant was questioned about a large withdrawal and a large deposit reflected in his bank records for March 2011. He explained the withdrawal was for spending money during a trip to Las Vegas, while the deposit was for the purchase of a luxury vehicle. He testified that he vacationed in Las Vegas each of the past five years. His security clearance application also revealed extensive travel to Europe, Central America, and the Caribbean from 2004 to 2013. During that period, he requested to modify the mortgage on one of his investment properties due to financial hardship and claimed a monthly income of \$400.

Applicant has several unresolved delinquent debts, including a Federal tax lien for over \$30,000, two judgments, three mortgage loans on two investment properties in foreclosure, two charged-off accounts totaling over \$30,000, and a collection account. He claimed the charged-off accounts were the result of fraud. A credit reporting agency conducted an investigation and verified his liability for the two charged-off accounts. Applicant also claimed he was the victim of predatory lending practices, submitted news articles about unlawful lending practices by some lenders, but did not supply any evidence tying his mortgage-related debts to actual evidence of fraud. He resolved seven collection accounts totaling about \$1,000. He received financial counseling and had a net monthly remainder of less than \$200.

## **The Judge's Analysis**

The Judge found in favor of Applicant on the collection accounts that he resolved. The Judge concluded that none of the mitigating conditions applied to the unresolved debts. He noted that Applicant accumulated over \$100,000 in past-due Federal taxes and an additional \$180,000 in consumer-related debt. He also pointed out that Applicant stopped paying his mortgages at the same time he was purchasing luxury items and taking foreign vacations.

The Judge concluded that Applicant deliberately attempted to mislead the Federal Government regarding the extent of his financial problems. He noted that, two years before submitting his security clearance application, Applicant stopped paying a credit card, a line of credit, and the mortgages on his investment properties. He found Applicant's explanations for the omissions on his security clearance application to be inconsistent with other record evidence and implausible.

## **Discussion**

We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015). While Applicant has not explicitly challenged any of the Judge's findings by citing to specific contradictory evidence in the record, he did indicate his disagreement with some of the Judge's findings in his recitation of the facts. For example, he stated that he believed he provided proof to show the Federal tax lien was removed and that he no longer owed that debt. The Judge, however, found that Applicant submitted a release for another tax lien and the tax lien alleged in the SOR remained unresolved. Applicant claimed that the judgments for past-due homeowners association dues were resolved through a payment plan and the final payment was made in September 2015. The Judge, on the other hand, noted Applicant submitted a copy of the payment plan, but provided no documentation showing the debt was paid or otherwise favorably resolved. After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant further contends that the Judge did not weigh or consider all relevant evidence. Contrary to Applicant's contention that the Judge failed to consider his positive character evidence or his claim that certain of his debts were the result of fraudulent activity, the Judge made findings about those matters. Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-05959 at 2 (App. Bd. Apr. 6, 2016). Additionally, his disagreement with the Judge's weighing of the evidence was not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-04719 at 3 (App. Bd. Apr. 6, 2016). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board

nor sufficient to undermine the Judge’s decision. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). In reaching his decision, the Judge considered the totality of the evidence in compliance with the whole-person analysis requirements. *See* Directive, Enclosure 2 ¶ 2 and ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

The Judge examined the relevant evidence 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 F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board