

KEYWORD: Guideline F

DIGEST: The Judge should have discussed Exhibit O pertaining to the schedules short sale of property. Adverse decision remanded.

CASENO: 14-05150.a1

DATE: 04/20/2016

DATE: April 20, 2016

---

In Re: )  
 )  
 )  
 ----- ) ISCR Case No. 14-05150  
 )  
 )  
 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 April 22, 2015, 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 February 23, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 failed to consider all of the evidence; whether the Judge’s application of the mitigating conditions was erroneous; and whether the Judge’s whole-person analysis was erroneous. Consistent with the following, we remand for a new decision.

### **The Judge’s Findings of Fact**

Applicant has held a clearance since 2005. In 2007, he bought rental property for about \$238,000. However, his employer reduced his income, and his tenant stopped paying rent, as a consequence of which Applicant could not make his monthly mortgage payment. He attempted to sue the tenant for rent and to obtain a loan modification but was not successful. Applicant states that the home went into foreclosure in 2011. It was vandalized in 2014. Applicant has a past-due amount of over \$243,000 on the loan for this property. He has not sold it, and the balance is not resolved. However, he has a contract for a would be short-sale if it is approved. Other attempts at short-sales did not meet with success. His realtor believes that there is “a strong chance” that this agreement will be accepted. Decision at 3. Applicant stopped making payments on the mortgage in 2008. In addition, Applicant is indebted to his state for liens in the combined amount of over \$3,200. These pertain to his rental property. Applicant submitted a letter from a colleague commending him for his trustworthiness and professionalism.

### **The Judge’s Analysis**

The Judge resolved an allegation in Applicant’s favor, one that addressed a debt to a bank. However, for the delinquent mortgage and the tax liens she entered adverse findings. She noted that the debts in question are unresolved and that, while Applicant has a contract for a short-sale, other such efforts have been rejected. Though noting circumstances outside Applicant’s control that affected his financial problems, she also noted that Applicant’s mortgage problem is eight years old and resolution is not yet certain.

### **Discussion**

Applicant contends that the Judge did not consider all of the evidence in the record. Specifically, the documents, including a HUD 1, in Exhibit O pertaining to the scheduled short sale of the property were not discussed. While the Board notes that not all the documents are signed, the cumulative significance of the documents contained in the exhibit is sufficient such that the Judge should have discussed the exhibit. The case is remanded for the Judge to issue a new decision in which she addresses Exhibit O.

**Order**

The Decision is **REMANDED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

**Dissenting Opinion of Administrative Judge James E. Moody**

I disagree with my colleagues. Whether or not it would have been preferable for the Judge to have discussed Exhibit O, the exhibit does not, on its face, refute or undermine anything in her Decision. The Judge acknowledged that Applicant had a pending contract for the sale of the property in question but also noted that other attempted short sales had fallen through over the years. The exhibit states that closing had to occur by December 28, 2015, and there is nothing in the record to show that this was done. I would affirm the Judge's decision.

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