

KEYWORD: Guideline F

DIGEST: There is a rebuttable presumption that the Judge considered all the evidence. Once the government has established its case the burden falls on the applicant to establish matters in mitigation. Adverse decision affirmed.

CASENO: 14-05488.a1

DATE: 03/25/2016

DATE: March 25, 2016

In Re:)
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-----) ISCR Case No. 14-05488
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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

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 18, 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 that the case be decided based on the written record. On December 10, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge found: Applicant is 36 years old. While in the active duty military, he applied for and received a security clearance required for his duties. However, the investigation and adjudication in that case revealed financial misconduct involving criminal offenses such as theft and embezzlement, as well as delinquent debts. DoD adjudicators initially revoked Applicant’s clearance, but he appealed that decision and was granted a clearance conditioned upon a continuing commitment to meet his financial obligations and not incurring further debt.

Applicant found employment after leaving the active duty military in 2010, but left his job in 2013 because his wife had an opportunity for a tuition-free college education. Subsequently, Applicant could not find work for almost three months. He incurred state tax debts relating to an inheritance around 2005. These debts became delinquent and he claims he has been repaying the debt at the rate of \$175 per month. He provided no documentary support for his claims. In 2011, Applicant experienced a quadrupling of homeowner’s association fees relating to a condominium he purchased while in the military. As a result, he had trouble making his monthly payments. He then moved and tried to rent out the condo, but did not receive enough rent to cover his costs. By the time he put the property up for sale, the condo’s value had fallen and the real estate market crashed. Applicant has been trying unsuccessfully for four years to execute a mortgage modification, as the property is now worth \$60,000 less than he owes. Applicant claimed he also has tried to dispose of the mortgage through a short sale, but was unsuccessful. Other than the explanation he provided in his SOR response, Applicant did not provide any documentation of his efforts to resolve this debt. For a number of other smaller debts, Applicant produced information documenting the payment terms and schedules of payments, but he did not establish that he actually has made any of those payments. Applicant claims his current finances are sound.

The Judge concluded: Applicant has a long history of financial problems before and after his military service. The facts adjudicated in his prior request for clearance while he was in the military are relevant to this suitability assessment insofar as they bear on whether Applicant’s financial problems will recur. Although the debts involving the mortgage and his inheritance arose through unforeseen circumstances, it is still incumbent on Applicant to show he acted responsibly in the face of those circumstances. Applicant did not corroborate his explanations and claims of repayment or negotiations with creditors. His debts are still outstanding and must be considered as recent. His actions to resolve his debts are either ongoing or have only come to fruition after receiving the SOR. Applicant did not provide information to show that his current finances are stable. Without more

substantive information to support Applicant's claims of repayments and financial stability, doubts remain about whether his finances will continue to present a security concern. Those doubts must be resolved against the Applicant.

Applicant argues that the Judge did not make specific findings of fact regarding six debts listed in the SOR. While it is true that the Judge did not include in his narrative a description of each debt and the amount owed, he did incorporate by reference admissions made by Applicant in his answer to the SOR, which included a substantial exposition about his debts and the circumstances behind them. The Judge also noted the SOR when mentioning that Applicant had either disclosed the debts in question on his security clearance application, or the debts were documented by credit reports contained in the case file. At least four of the debts were specifically mentioned when the Judge noted Applicant's claim that he would start repayment plans for the debts. To the extent Applicant is arguing that the Judge committed error through inadequate fact finding, that argument lacks merit.

Applicant also asserts that the Judge "did not credit" certain evidence he considers mitigating and that the failure to do so was error. There is a rebuttable presumption that a judge has considered all the evidence in the record, unless he or she states otherwise. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Applicant has not rebutted this presumption. In his decision the Judge mentions much of the evidence in mitigation referenced by Applicant. The gravamen of the Judge's decision, however, was that Applicant failed to provide evidence that corroborated the representations he made in his answer to the SOR. Once the Government has established its case, the burden falls on an applicant to establish matters in mitigation. Directive ¶ E3.1.15. The Judge's conclusion that Applicant's assertions, standing alone, did not establish his claims of debt reduction was sustainable.

Applicant argues generally that the record supports a conclusion that he mitigated the Government's security concerns relating to his finances. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Here, Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence regarding mitigation. Applicant's assertions regarding his efforts at debt resolution was evidence the Judge was required to consider. However, such evidence does not mandate a favorable decision. Other than his uncorroborated statements in his answer to the SOR, Applicant produced no evidence that he had a workable plan or was making payments that made it likely that his problems would be resolved within a reasonable period of time. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). The Board concludes that the Judge appropriately weighed the Guideline F mitigating evidence against the seriousness of the disqualifying conduct.

Applicant notes his *pro se* status below and asserts that he has further mitigating information to supply to the Judge. He requests that the case be remanded to the Judge for additional fact finding

and a disposition based on additional evidence. Applicant has failed to establish error by the Judge or any denial of his procedural due process rights that would make such a remand appropriate.

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 consistent with the interests of 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 of the Judge 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 Ellis Moody
James E. Moody
Administrative Judge
Member, Appeal Board