

KEYWORD: Guideline C; Guideline F

DIGEST: The Directive does not permit the Board to consider the impact of an unfavorable decision. Adverse decision affirmed.

CASENO: 14-06226.a1

DATE: 10/15/2015

DATE: October 15, 2015

In Re:)	
)	
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)	ISCR Case No. 14-06226
)	
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 January 31, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 19, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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. The Judge’s favorable findings under Guideline C are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issue raised on appeal: Applicant is delinquent on a home equity line of credit (LOC) in the amount of a little over \$12,400. This debt has been delinquent since 2012. The LOC pertains to a rental property that Applicant owns and that is worth \$750,000 and in which he has nearly \$500,000 in equity. Applicant contends that he has requested a loan modification and that the lender will not accept any payments during the modification process. He did not corroborate his claim.

Applicant attributes his financial problems to periods of unemployment and also to diminutions in pay when he was working. Despite these difficulties, Applicant and his wife fully finance their sons’ educational costs and living expenses. Applicant enjoys a good reputation for his work performance and his ability to follow procedural guidelines.

The Judge’s Analysis

The Judge found that Applicant’s delinquent LOC is an ongoing debt and that there is no reason to conclude that the circumstances underlying it have changed. Though noting Applicant’s unemployment, which was beyond his control, she concluded that he did not show responsible action in regard to the LOC. She cited to evidence that Applicant has prioritized his sons’ educational expenses over his obligation to the lender. She also noted that Applicant had presented no evidence of financial counseling or that he is working with the lender to resolve the LOC.

Discussion

Applicant’s brief contains matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant notes that his continued employment is contingent upon his having a clearance. However, the Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-02041 at 3 (App. Bd. Aug. 17, 2015).

Applicant cites to his having worked in the Defense industry for many years and his excellent security record. This was evidence that the Judge was required to consider, along with all the other evidence in the record. However, even those with good security histories may experience circumstances which draw their judgment into question. The Government does not have to wait until a person commits a security violation in order to make an adverse clearance decision. *See, e.g.*, ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013). Applicant argues that he has demonstrated resolution of his LOC. However, the Judge’s findings and conclusions about this debt, including the lack of corroboration for Applicant’s claims, are supportable. In any event, even if a debt has been paid or settled, a Judge can still consider the underlying circumstances of the debt for what they may reveal about an applicant’s judgment and reliability. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Given record evidence of the age of the delinquent LOC, its ongoing status as of the close of the record, Applicant’s substantial net worth (and apparent ability to pay the debt), and his prioritizing of his sons’ educational expenses over the interests of the creditor, the decision is sustainable. “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: Jean E. Smallin
Jean E. Smallin
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