

KEYWORD: Guideline F

DIGEST: Applicant cites to comments by the Judge, such as that “he is lost” “he’s clueless,” and “[h]e has no idea what’s going on.”. He describes these remarks as “cutting.” There is a rebuttable presumption that a Judge is impartial and unbiased. The challenged comments occurred after the Judge had questioned Applicant about his alleged debts. In regard to each, Applicant admitted that he had not contacted creditors or otherwise taken significant action. Some of her words may have been ill-chosen. The Judge expressed an understandable, if not reasonable, concern that Applicant had presented little mitigating evidence. Adverse decision affirmed.

CASENO: 15-00552.a1

DATE: 10/26/2016

DATE: October 26, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-00552
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Andria C. Redcrow, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 27, 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). On August 5, 2016, after conducting a hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 was biased against him and 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 is employed by a Defense contractor. He has held a clearance since 2003. His SOR lists nine delinquent debts, the legitimacy of which are established by Applicant’s admissions and by the record evidence.

In 2006, soon after his marriage, Applicant’s mother-in-law died, and his father-in-law left the U.S. Applicant and his wife took over responsibility for the in-law’s real estate holdings. The couple had no experience in managing real estate, but they found themselves having to pay mortgages on their own house and on their in-law’s property. When a tenant failed to pay his rent, Applicant made payments out of his own funds.

Applicant considered filing for bankruptcy, although an attorney advised him that such a course of action might imperil his clearance. For about five years, Applicant did nothing to resolve his debts, which spiraled out of control. Applicant has either failed to contact his creditors or has only recently done so. After the hearing, Applicant submitted evidence that he had filed for Chapter 13 bankruptcy protection. Applicant’s attorney has tried to contact some of the creditors, and Applicant has cancelled his credit cards. He is taking a credit counseling course.

Applicant enjoys a good reputation for his character and for community service. His references support his effort to retain his clearance. One of his witnesses states that Applicant’s duties entail providing support to a military service. This person does not believe that Applicant is a security risk.

The Judge’s Analysis

The Judge cited to evidence that Applicant and his wife took over management responsibilities for his in-laws’ real estate despite lacking proper experience. She attributed their

excessive indebtedness to the couple lacking the financial resources to make all the payments associated with the property holdings. She cited to Applicant's bankruptcy filing as an effort to resolve his debts and to some proof of payment. However, the Judge concluded that he does not have an understanding of his financial situation. She characterized his circumstances as a "pattern of financial irresponsibility" (Decision at 7) and found his evidence in mitigation to be unpersuasive. The Judge concluded that Applicant's handling of his finances did not demonstrate the judgment expected to those with security clearances.

Discussion

Applicant cites to comments by the Judge, such as that "he is lost," "he's clueless," and "[h]e has no idea what's going on." Tr. at 44. He describes these remarks as "cutting," thereby exercising a chilling effect on his testimony. We construe this as an attack on the Judge's impartiality. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 12-10122 at 3 (App. Bd. Apr. 22, 2016).

We have considered Applicant's argument in light of the record as a whole. The challenged comments occurred after the Judge had questioned Applicant about the debts alleged in the SOR. In regard to each, Applicant admitted that he had not contacted creditors or otherwise taken significant action. Some of her words may have been ill-chosen. The Judge expressed an understandable, if not reasonable, concern that Applicant had presented little mitigating evidence despite being represented by counsel.¹ We note that Department Counsel stipulated to Applicant's proffer about steps that had recently been taken to address his debts (Tr. at 51), and the Judge permitted Applicant to submit documentary evidence after the hearing to demonstrate efforts at debt resolution. Tr. at 86. Applicant submitted such evidence, which the Judge admitted into the record. All in all, we find no reason to believe that the Judge exhibited an inflexible predisposition to enter adverse findings or that she otherwise exhibited bias against him. To the extent that Applicant is contending that the Judge denied him due process by impairing his ability to present his case for mitigation, we find no support for this argument.

The remainder of Applicant's brief cites to favorable evidence, such as his having filed for bankruptcy, his having hired lawyers, his financial counseling, etc. He argues, in effect, that the Judge failed to extend the proper weight to this evidence. However, 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. 14-06686 at 2 (App. Bd.

¹Applicant is represented by a different attorney on appeal from the one at the hearing.

Apr. 27, 2016).² Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016).

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

Signed: William S. Fields
William S. Fields

²Applicant argues that the Judge gave only brief consideration to circumstances outside his control that affected his debts. In fact, the Judge made findings about Applicant having undertaken to manage his in-laws’ rental properties following his mother-in-law’s death, but she concluded that to have done so without sufficient experience did not demonstrate good judgment. *Compare* Applicant’s testimony about his real estate problems with his answers during his clearance interview: “[Applicant] was always able to stay current on all financial obligations until about a year or so after he and his wife married. They overspent and ran up the balances on their credit cards . . . [Applicant] realizes that he and his wife overspent and lived beyond their means within the first three to four years of their marriage and ran up their credit card balances. They started to get behind in about 2010 when they had more monthly bills than they could keep up with.” Government Exhibit (GE) 2, Clearance Interview, at 8, 9. Nowhere in this interview does Applicant mention having taken over responsibility for his relatives’ property holdings. *Compare also* with Applicant’s answers in his SF-86 concerning his delinquent credit card accounts, which he attributed to “not budgeting and overspending.” GE 1, SF-86, at 29-30.

Administrative Judge
Member, Appeal Board