

KEYWORD: Guideline F

DIGEST: We examine a Judge’s findings of fact to see if they are supported by substantial evidence. In this case, the Judge’s material findings are sustainable. Applicant did not rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 15-01285.a1

DATE: 12/22/2016

DATE: December 22, 2016

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In Re:)	
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)	ISCR Case No. 15-01285
)	
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 October 19, 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 decision on the written record. On October 7, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Chief Administrative Judge Erin C. Hogan 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's findings of fact contained errors 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 sponsored by a DoD contractor who will hire him if he receives a clearance. His SOR lists several delinquent debts, and Applicant admitted the allegations. Divorced, Applicant has two children, ages 18 and 20.

Applicant's SOR alleges a \$62,000 debt for past-due child support payments. Applicant contends that he had been making payments to his spouse since their separation. However, the court in the subsequent divorce action did not accept Applicant's contention and, as part of the decree, ordered him to make two year's worth of retroactive payments. Applicant's other debts include Federal tax liens for 2012 and 2014 and a state tax lien for 2011. Applicant admitted that he had not filed his tax returns, although this was not alleged in the SOR. The Judge stated that it was not clear whether Applicant's tax returns had actually been filed and whether the IRS had assessed any penalties. Applicant also owes over \$11,000 resulting from a vehicle repossession, a \$10,000 judgment on behalf of a bank, and a debt of under \$500, also to a bank. The Judge found that Applicant had not provided information about the status of his delinquent debts.

Applicant has been unemployed since 2011. He has supported himself with unemployment compensation and with income from odd jobs. He also owns a company, though it is not clear how much income he receives from this.

The Judge's Analysis

The Judge noted that Applicant has had financial problems for many years, including delinquent child support and failure to pay taxes. She stated that someone who is irresponsible with his debts may well be equally so with classified information. In evaluating Applicant's case for mitigation, the Judge concluded that his debts are recent and ongoing. Although Applicant's problems were affected by a divorce, which was a circumstance outside his control, she stated that he had not evidenced responsible action. The Judge also stated that she was considering the non-alleged conduct—failure to file tax returns—for its bearing upon mitigation. She stated that Applicant had not demonstrated a good-faith effort to pay his debts, nor had he provided proof that he had actually filed or paid his debt to the IRS. Although he provided a child support payment history up through 2014, there is nothing in the record to show payments after that.

Discussion

Applicant challenges some of the Judge's findings of fact, for example, that he had admitted all of the debts in the SOR, the age of his children, his employment status, and that he was in arrears on child support. 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).

Applicant is correct that he did not admit all of the allegations. In fact, he denied two SOR debts.¹ Therefore, to the extent that the Judge found that he had admitted all of the SOR allegations, she erred. The Judge also may have misstated the ages of at least one of Applicant’s two children, based upon the information provided in his security clearance application (SCA). Item 3, SCA, at 23-24. These two things are of minimal significance.

On the other hand, the Judge’s findings about Applicant’s employment are supportable. In his clearance interview he stated that he had yet to start employment with the company that is sponsoring him for a clearance and that he had been unemployed since 2011. Item 4, Clearance Interview Summary, at 4. We also find no reason to disturb the Judge’s findings about child support. Her findings addressed Applicant’s contention that he had actually made payments to his estranged wife before the date of his divorce. However, the record supports the Judge’s observation that there is nothing in the record to show payments after 2014. Child Support Payment Summary Report, dated April 2014, included in Item 2, Response to SOR. Indeed, in Applicant’s 2014 clearance interview, he agreed that, at that time, he owed nearly \$53,000 in back child support and only made payments of \$200 to \$400 “when he can.” Item 4 at 6. Moreover, Item 8, Credit Report dated September 2015, shows a remaining balance of over \$62,000 in past-due child support obligations, suggesting that his debt had grown since the time of his interview. The Judge’s findings about Applicant’s child support debt, including that he did not provide clear information about its current status, are consistent with the record that was before her.

After considering Applicant’s appeal argument as a whole, we conclude 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).

The balance of Applicant’s appeal consist of challenges to the Judge’s weighing of the evidence, in an effort to show that he had established mitigation. In doing so, Applicant cites to the evidence that he had submitted, arguing that it shows that he is resolving his financial problems. Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record or 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. 14-05795 at 2-3 (App. Bd. Apr. 26, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. A person who fails repeatedly to fulfill his or her legal obligations, such as paying child support; filing and paying and taxes; and discharging debts when due, does not demonstrate the high

¹The Judge resolved these two debts in Applicant’s favor.

degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961) (Security requirements include, *inter alia*, “a high sense of one’s obligations[.]”). 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
Administrative Judge
Member, Appeal Board