

KEYWORD: Guideline F; Guideline E

DIGEST: The Directive presumes a nexus between proved or admitted facts under any of the guidelines and an applicant’s eligibility for a clearance. The non-collectability of a debt does not constitute a good-faith effort at payment. That a debt no longer appears on a credit report is not meaningful evidence as to the debt’s disposition. Hearing Office cases are not binding on other Judges. Adverse decision affirmed.

CASE NO: 15-03527.a1

DATE: 12/29/2016

DATE: December 29, 2016

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-03527
---	---------------------------------	------------------------

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 November 20, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 29, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 E 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 served in the military from 1972 until 1978, receiving an honorable discharge. He has been married four times, twice to the same woman. He has been employed by a Federal contractor since 2003. Applicant's SOR includes a debt for a little over \$125,000, a charged-off second mortgage. He submitted a recent credit report that does not include this debt. He provided no other evidence as to what actions he may have taken to dispute or resolve it.

The Judge characterized Applicant's evidence as confusing. She attempted "to decipher some of the facts" that Applicant had submitted. Decision at 2. In essence, Applicant purchased real estate from his brother in 2006. His brother gave him title by means of a quitclaim deed. However, he did not transfer the lien, with the result that the loan remained in the brother's name although the collateral had been transferred to Applicant. Subsequently, Applicant sought to purchase another piece of real estate and wanted to use the equity from the first one as collateral for a loan. A lender gave him a "bridge loan," although it is not clear how, insofar as the original loan was not in Applicant's name. The value of the first property declined, and Applicant stopped making payments on it. The lender foreclosed on the first property. Applicant states that the loan in his brother's name is no longer enforceable, both because it was a second mortgage barred from collection and also because the statute of limitations has run.

The Judge's Analysis

The Judge concluded that there is insufficient evidence to show that the debt in question is not enforceable. She stated that the record does not answer questions about how Applicant was able to use equity in the first property to obtain a purchase money loan for the second. She noted that Applicant has been aware that this debt was a concern since his background interview. She also stated that she was "unable to untangle a convoluted real estate transaction, based on the minimal evidence in the record." Decision at 6-7. The Judge concluded that none of the mitigating conditions apply. In the whole-person analysis, the Judge noted Applicant's military service. However, she was not able to conclude that the transaction that Applicant described is actually the one alleged in the SOR. Moreover, even if this debt is no longer enforceable due to operation of law, there is little evidence to show that Applicant has conducted himself in a reasonable manner.

Discussion

Applicant contends that the Judge's adverse decision is arbitrary and capricious because she failed properly to take his circumstances into account or to understand the facts of his case. He argues that she did not take into account state laws barring collection of second mortgage debts,

focusing instead on what she termed “confusion.” Appeal Brief at 10. Applicant argues that due to this confusion she could not properly analyze his circumstances.

We have considered this argument in light of the record as a whole. We note first of all that the SOR alleged the following:

You are indebted to [Bank] for an account that has been placed for collection in the approximate amount of \$125,122.00. As of the date of this [SOR], the account remains delinquent. SOR ¶ 1.a.

Applicant admitted this allegation with an explanation. Under the facts of this case, Applicant’s admission is sufficient to raise security concerns. *See, e.g.*, ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016) for the proposition that the Directive presumes a nexus between admitted or proved conduct under any of the Guidelines and an applicant’s eligibility for a clearance. That being the case, it was Applicant’s task to present evidence in mitigation, and it was he who bore the burden of persuasion that he should have a clearance. Directive ¶ E3.1.15. To the extent that an applicant’s record raises doubts about his fitness for a clearance, these doubts must be resolved in favor of national security. Directive, Enclosure 2 ¶ 2(b).

We have considered the record as a whole and conclude that the Judge’s description of the events surrounding this debt is reasonable. Indeed, Applicant’s Answer to the SOR included an acknowledgment by a realtor that the transaction was not legal and in his brief Applicant characterizes it as “bizarre.” Statement of Realtor, attached to Answer to SOR; Appeal Brief at 10. Moreover, we note the Judge’s finding that Applicant has known about this debt since his background interview but has not addressed it beyond asserting that the debt is no longer collectable. We also note the Judge’s comment that Applicant had not presented sufficient evidence to support a finding that the debt was barred from collection. Even if the debt cannot be enforced, however, reliance on the non-collectibility of a debt does not constitute a good-faith effort to resolve it within the meaning of the Directive. *See, e.g.*, ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011). We find no error in the Judge’s characterization of Applicant’s evidence or in her conclusion that the evidence was not sufficient to mitigate the concerns raised by his SOR admission.

Applicant cites to various pieces of evidence, such as a downturn in the economy and recent credit reports that do not include the debt under consideration. On this latter point, the fact that a debt no longer appears on a credit report does not, in and of itself, establish meaningful evidence as to the debt’s disposition. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). 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).

Applicant cites to a Hearing Office case that he believes supports his effort to obtain a favorable result. We have given this case due consideration as persuasive authority. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). The case that Applicant has cited

has significant differences from his own. This case does not support a conclusion that the Judge's decision in the case before us is arbitrary, capricious, or contrary to law.

The Judge examined the relevant evidence 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).

Order

The Decision is **AFFIRMED**.

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

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board