

KEYWORD: Guideline F

DIGEST: The Judge’s material findings of security concern are supported by substantial evidence. Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 15-03435.a1

DATE: 10/04/2016

DATE: October 4, 2016

In Re: ----- Applicant for Security Clearance))))))))	ISCR Case No. 15-03435
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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 December 2, 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 hearing. On August 2, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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; whether the Judge failed to consider all of the evidence in the record; 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 has held a security clearance for over 20 years without incident or concern. He served in the military from 1972 to 1978, rising to the grade of E-5. Applicant has experienced some circumstances that had a harmful impact on his finances. For example, after his employer moved to a different state, Applicant was unemployed for a month before taking a job with a different company at a reduced salary. Several years later, his spouse had surgery, with the result that she could not work, thereby reducing the household income by about \$35,000 a year. As a consequence of these difficulties, some of Applicant's debts became delinquent. Applicant has an annual salary of \$68,000. He recently began receiving social security benefits of \$2,230 a month, as well as a pension from a previous job in the amount of \$2,100 a month. He received financial counseling in 2009 or 2010.

Applicant's debts include approximately \$3,400 owed to a bank. This account became delinquent in 2011 and was charged off in February 2016. Applicant had several accounts with this creditor and paid off one of them. Other debts include \$2,040 owed to another bank and a \$10,000 tax lien filed by the IRS for delinquent taxes. Applicant's tax delinquency resulted from his having miscalculated the amounts he owed the Government, as well as his having had inadequate withholding. The SOR alleged delinquencies owed for tax year 2009. Applicant also owes back taxes for 2011, 2013, and 2015. The Judge stated that he was considering the non-alleged tax delinquencies for the permitted purposes as set forth in ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).¹ Applicant has a payment plan that includes tax delinquencies for 2009, 2011, and 2013. He submitted checks showing payments of \$175 a month from November 2015 to June 2016. He has reduced his tax debt to \$8,000.

The Judge's Analysis

The Judge cited to evidence of circumstances outside Applicant's control that affected his finances. However, given his salary and retirement benefits, Applicant did not explain why he had not made more progress in resolving his tax delinquencies. Although he resolved several debts in Applicant's favor, he found that three of them were not resolved as of the close of the record, including the significant tax debt.

Discussion

Applicant contends that the Judge's findings are insufficient because they do not include information about three of the debts alleged in the SOR. However, two of the debts that Applicant mentions in his brief were resolved in his favor. Therefore, any error regarding them is harmless.

¹To assess credibility; to evaluate the applicant's mitigation evidence; to consider the extent to which the applicant has demonstrated rehabilitation; to decide whether a given provision of the Guidelines is applicable; and/or to perform a whole-person analysis.

The other debt is one owed to a bank. Applicant contends that he had paid this debt off. However, the Judge found that Applicant had more than one debt at this bank. He found that one of them had been resolved but that the one alleged in the SOR had simply been charged off. This finding is consistent with the record that was before him. Applicant also states that the Judge erred in finding that he owed \$25,000 in delinquent debt. He states that the outstanding amount is much less. However, the challenged finding is the total amount alleged in the SOR. The Judge found that the total amount of unresolved debt was about \$12,000. Decision at 8. The Judge's material findings of security concern are supported by substantial evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Moreover, Applicant has failed to rebut 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board