

KEYWORD: Guideline F

DIGEST: We note that the Judge’s calculation of Applicant’s discretionary income does not account for Federal or state income taxes or other standard payroll deductions. It was error to conclude that Applicant had \$3,000 of monthly discretionary income without accounting for those taxes and deductions. Adverse decision remanded.

CASENO: 15-00842.a1

DATE: 09/12/2017

DATE: September 12, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-00842
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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 February 12, 2016, 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 June 14, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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 erred in his findings of

fact and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the decision.

The Judge's Findings of Fact and Analysis

The Judge summarized the case as follows:

Applicant began accumulating delinquent debt in 2009. She compounded her financial difficulties when three federal tax liens were filed against her in 2011 for not paying federal taxes. Three civil judgments were filed against her in 2010, 2011, and 2012. She paid a few debts, including her state taxes, and is paying her federal taxes. However, she still owes several debts and has not provided sufficient evidence to prove that she has a plan to resolve the other remaining debts. Her evidence in mitigation does not overcome the disqualifying evidence presented under the financial considerations guideline. . . .¹

In the findings of fact, the Judge stated:

In her post-hearing documentation, [Applicant] provided her yearly earnings (\$79,000) and listed monthly expenses (\$3,290). After dividing her yearly earnings by 12 (number of months in a year), her gross monthly earnings are approximately \$6,583. After subtracting her listed expenses from her gross monthly income, she has about \$3,000 left over in discretionary income, assuming that her monthly medical bills and student loan payment (two expense categories that she did not assign estimates to) amount to about \$293 a month.²

In his whole-person analysis, the Judge stated, "Applicant's uninterrupted earnings since 1991 and her current discretionary monthly remainder of about \$3,000 should have allowed her to address her delinquent debts much earlier."³

Discussion

Applicant contends the Judge erred in finding that she has about \$3,000 in monthly discretionary income. We note that the Judge's calculation of Applicant's discretionary income does not account for Federal or state income taxes or other standard payroll deductions.⁴ It was error to conclude that Applicant had \$3,000 of monthly discretionary income without accounting for those

¹ Decision at 1.

² Decision at 4.

³ Decision at 7.

⁴ A review of Applicant's bank statements (Applicant's Exhibit E) shows that she had payroll deposits of about \$2,150 for two months in 2016. Since Applicant did not provide complete copies of her bank statements for both of those months, it cannot be determined if that figure was her total monthly take-home pay during those months.

taxes and deductions and, given the Judge's reliance on that figure in his analysis, we cannot conclude this error was harmless. Accordingly, we conclude that the best resolution of this case is to remand the case to the Judge for correction of the error and further processing consistent with the Directive.

Order

The Decision is **REMANDED**.

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