

KEYWORD: Guideline F

DIGEST: The Judge’s material findings are sustainable. Applicant has cited to no harmful error in the findings. Adverse decision affirmed.

CASENO: 15-01544.a1

DATE: 06/20/2017

DATE: June 20, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-01544
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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 October 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). Applicant requested a hearing. On April 4, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served in the military from 1977 to 1981. He has worked as a contractor and has held a clearance for over 30 years. His SOR lists five delinquent debts, and he has resolved two of them. The remaining three are for credit cards. He fell behind in his payments in about 2005, which resulted in increased interest rates on his accounts. After receiving the SOR, Applicant consulted a financial counselor, who advised him not to contact the creditors because doing so could revive debts that were past the statute of limitations. Applicant attributed his financial problems to a marital separation in 2000. The subsequent divorce was expensive to Applicant, and he started relying on credit cards.

A creditor offered Applicant a settlement, which he could have paid by means of a loan from his 401(k) account. He elected not to do so, however, even though he had previously taken out loans in order to pay debts or make home repairs. Applicant and his wife have combined earnings of about \$90,000 a year. Applicant owns a home and has made additional payments on his mortgage loan. He has a favorable credit score.

The Judge's Analysis

The Judge cited to matters that were outside Applicant's control, such as his divorce, that affected his financial situation. He concluded that Applicant did not show responsible action in regard to his credit card debt, insofar as he decided to walk away from it rather than resolve it. He concluded that Applicant used the "windfall" resulting from this decision for such things as improving his retirement savings and paying down his mortgage. The Judge also stated that Applicant's case for mitigation was impaired by his failure to disclose the credit card debts on his security clearance application, although he did list two debts that he had paid. This omission was not alleged in the SOR, but the Judge stated that he was considering it on the issues on mitigation, credibility, and the whole-person factors.¹ He stated that reliance upon the statute of limitations is not sufficient to mitigate concerns arising from the credit card debts, given a lack of significant evidence of financial reform.

Discussion

Applicant's brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.129. He challenges the Judge's statement that he had received a windfall from his decision not to pay his credit card debt. We read the Judge's comment to mean that Applicant's having paid down his mortgage with funds that might have gone to debt resolution detracted from his case for mitigation. We cannot say that this is error. The Judge's material findings are sustainable. Applicant has cited to no harmful error in the findings. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

¹See ISCR Case No. 14-00151 at 3, n.1 (App. Bd. Sept. 12, 2014) for the extent to which a Judge can consider non-alleged conduct.

Applicant cites to favorable evidence, such as his having resolved some of his debts. He argues that his conduct shows financial responsibility. Applicant has not rebutted the presumption that the Judge considered all of the evidence, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017).

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). *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