

KEYWORD: Guideline F

DIGEST: Applicant's history of delinquent debt, coupled with a paucity of evidence of debt resolution, support the Judge's conclusion that Applicant's financial problems raise security concerns. Applicant has not rebutted the presumption that there is a connection between the record evidence of his financial delinquencies and a concern that he may fail to protect classified information. Adverse decision affirmed.

CASENO: 15-04953.a1

DATE: 05/04/2017

DATE: May 4, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-04953
)	
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 December 7, 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 March 15, 2017, 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 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 retired from the U.S. military. He has worked for contractors since at least 2003 and for his current employer since 2011. Applicant has experienced periods of unemployment from one to six months between contracts and was unemployed from January 2004 to January 2005. He has performed his duties almost exclusively overseas.

Applicant's SOR alleges nearly \$70,000 in delinquent debts, for credit cards, a repossessed vehicle, a disputed rental agreement, etc. Applicant denied certain debts and attributed others to identify theft. Applicant did not provide documentary evidence of the basis for his disputes nor did he demonstrate that any of the SOR debts had been paid. In addition, Applicant and his wife purchased a house as an investment. He contended that the second mortgage on the house was sold and that he did not know whom to pay, so he advised his wife to make no payments until someone contacted them. The lender foreclosed on the house. This debt was not alleged in the SOR. The Judge stated that she was considering it for limited purposes, such as mitigation, the whole-person analysis, etc.

Applicant claimed that his problems with the house and with the vehicle originated from the creditors having made mistakes about the appropriate interest rates. He contended that other creditors closed accounts without communicating with him and that he was unfairly charged for damage to rental property. As noted above, Applicant provided no corroboration for his claims.

Applicant's character references describe him as diligent, ethical, reliable, honest, and patriotic. He is lauded for his good judgment and integrity. In his Response to the File of Relevant Material, Applicant acknowledged that he had not paid sufficient attention to his finances, devoting his energies to his job. He stated that he is dedicated to serving his country.

The Judge's Analysis

The Judge concluded that Applicant's financial problems raised two disqualifying conditions: 19(a) and (c).¹ In evaluating Applicant's case for mitigation, she cited to a paucity of evidence of debt resolution or of a basis to dispute the debts. She stated that Applicant had provided no evidence to show that his problems originated from circumstances outside his control or that he had acted in a responsible manner in regard to them. She noted no evidence of financial counseling and stated that she could not conclude that Applicant's difficulties were under control. Although Applicant presented some letters to his creditors challenging his debts, she stated that he did not present evidence substantiating the actual basis for the disputes. She also cited to certain

¹Directive, Enclosure 2 ¶¶ 19(a): "inability or unwillingness to satisfy debts;" and (c): "a history of not meeting financial obligations[.]"

inconsistent statements that Applicant had made.² In the whole-person analysis, the Judge cited to evidence of Applicant's military career and his years of service to the Defense industry. However, she stated that his 2012 clearance application and his 2014 clearance interview had placed him on notice that his finances were of security concern, yet he did nothing to resolve his debts.

Discussion

Applicant contends that the Judge's findings of fact contain "egregious errors." For example, he denies that he was unemployed from 2004 to 2005. However, during his interview, he told the investigator that he had been unemployed from "01/2004 to 01/2005." Item 8, Interview Summary, at 2. He challenges the Judge's finding that he had purchased the house for investment purposes. In his security clearance application, Applicant stated that he had purchased the house as an investment. Item 4 at 68. He also denies that he had told his wife to stop paying the mortgage on the property. However, during his clearance interview, he told the investigator that "he told his wife to stop paying both mortgages until someone contacted them." Item 8 at 4. The Judge's material findings are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

Applicant contends that his circumstances do not raise concerns under Guideline F. He denies that he has committed any illegal acts or that he has acquired any unexplained affluence. However, the concern under this Guideline is not simply that an applicant might be tempted to commit illegal acts in order to pay his debts. A Judge should also consider the extent to which an applicant's circumstances cast doubt upon his judgment, self control, and other characteristics essential to protecting national security information. This obligation is rooted in the language of the Directive, which states that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information. Directive, Enclosure 2 ¶ 18. *See* ISCR Case No. 15-01737 at 3 (App. Bd. Feb. 14, 2017). Applicant's history of delinquent debt, coupled with a paucity of evidence of debt resolution, support the Judge's conclusion that Applicant's financial problems raise security concerns. Applicant has not rebutted the presumption that there is a connection between the record evidence of his financial delinquencies and a concern that he may fail to protect classified information. *See, e.g.*, ISCR Case No. 15-02903 at 2 (App. Bd. Mar. 9, 2017) .

Applicant challenges the Judge's whole-person analysis. He cites to his many years of service without incident or concern, his character references, etc. He notes that his circumstances implicate only one of the several Guidelines set forth in the Directive, arguing from this that his good qualities outweigh his unfortunate financial problems. Applicant also cites to a prominent person in the news whose circumstances, Applicant contends, did not result in loss of access to classified information. On this last point, we cannot consider new evidence on appeal. Directive ¶ E3.1.29. Furthermore, we lack jurisdiction to review the merits of cases committed to another

²The SOR alleged a delinquent charge account. SOR ¶ 1b. Applicant initially denied knowing anything about it. "I deny because this is incorrect. There is no balance. I do not even know who or what company [creditor] is, and so I do not believe that I owe that unidentified/unknown company anything." Answer to SOR. Compare with the following: "My wife returned items she purchased and the credit was not applied as it should have been. The amount owed is incorrect." Response to FORM.

Governmental body. *See, e.g.*, ISCR Case No. 99-0007 (App. Bd. Nov. 28, 2000). Applicant's arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they sufficient 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. 13-00502 at 3 (App. Bd. Mar. 7, 2017). Applicant states that without a clearance he will lose his job. The Directive does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017). Applicant cites to a portion of his clearance summary, arguing that the investigator concluded that he was "not susceptible to blackmail or coercion." Item 8 at 5. However, this comment reflects Applicant's answer to the investigator's question, not the investigator's independent judgment about Applicant's eligibility for a clearance. In any event, even if an investigator offered such an opinion, it would not bind the Government on a matter of national security. *See, e.g.*, ISCR Case No. 15-00535 at 4 (App. Bd. Mar. 13, 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 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board