

KEYWORD: Guideline F; Guideline B

DIGEST: Applicant’s arguments do not undermine the Judge’s conclusion that his financial problems were generally the result of his own conduct and that Applicant had the financial means to address his problems before resorting to bankruptcy. The Judge’s material findings of security concern are based upon substantial evidence or constitute reasonable interpretations of the evidence. Adverse decision affirmed.

CASENO: 15-04918.a1

DATE: 09/20/2017

DATE: September 20, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-04918
)	
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 April 29, 2016, 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 B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 26, 2017, after considering the record, 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 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. Department Counsel withdrew the Guideline B allegation in the File of Relevant Material. Therefore, that Guideline is not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant retired from the military in 2006 after 20 years of service. After leaving the military he has worked as a Federal contractor. He has worked for his current employer since early 2016. While in the military, Applicant's first attempt to obtain a clearance was unsuccessful due to pre-service misconduct. He was granted a clearance in 1990 or 1991. A few years later, the military investigated Applicant for misconduct during an overseas tour of duty. Applicant was never charged with wrongdoing.

Applicant built a house in 2005, financing the construction with equity taken from his existing home. After it was built, Applicant accepted work overseas and rented out his new house. In 2009, Applicant's renter had to vacate, and Applicant was not able to find another tenant. He could not pay the mortgages on two houses and sought a loan modification, but the lender denied this request. The lender foreclosed on the new house in 2010 and provided Applicant with a Form 1099-C showing that the over-\$500,000 debt had been canceled. Despite his stated inability to pay his mortgages, Applicant took numerous vacations in Europe and Asia between 2008 and 2013.

In 2007 and 2008, Applicant earned \$118,000 and \$300,000 respectively. In 2010 he earned \$140,000, in 2011 \$115,000, and in 2012 through 2014 \$200,000 or more each year. Applicant completed his security clearance application (SCA) in 2014. In that document he disclosed \$50,000 of past-due debt, although he did not report the foreclosure on his house. In his subsequent interview, he attributed his financial problems to the recession, reduction in pay, reliance on credit cards, and costs of his wife's visits to a foreign country to care for her ailing mother. He told the interviewer that he was paying down debts.

In 2015, after creditors initiated lawsuits against him, Applicant filed for Chapter 7 bankruptcy protection. His debts included delinquent state and Federal taxes, unsecured debts of over \$190,000, and monthly income of nearly \$11,000. After expenses, which included \$3,000 a month for the care and feeding of a horse and for his daughter's riding lessons, Applicant had a negative remainder of \$450.

The Judge's Analysis

The Judge noted Applicant's claim that his problems resulted from insufficient income. However, he cited to evidence that, during the years in question, Applicant received significant compensation, his adjusted gross income from 2010 to 2014 totaling almost \$1,000,000. The Judge also noted that Applicant's bankruptcy petition included reference to an unpaid \$30,000 judgment dating from 2007. The Judge concluded that Applicant's purchase of luxury cars, his expensive vacations, and his daughter's riding lessons showed that he was living beyond his means. He stated that Applicant had filed for bankruptcy only after his creditors sued him.

In the whole-person analysis, the Judge acknowledged Applicant's military service and his support to the U.S. as a contractor. He found that this favorable evidence was not sufficient to outweigh the concerns arising from Applicant's financial difficulties. He also noted that Applicant had disclosed only \$50,000 of debt in his SCA despite having about four times that much, as reflected in his bankruptcy filings. The Judge found that this detracted from Applicant's credibility.

Discussion

Applicant contends that the Judge erred in some of his findings. He argues that the Judge did not present the military investigation in its proper context, that his total earnings included benefits paid by his employer and did not reflect his true economic circumstances,¹ that his vacations had been paid for by his employer rather than out of his own pocket, that the \$30,000 judgment was against his wife rather than himself, etc. In presenting his arguments on appeal, Applicant includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29.

We have considered Applicant's arguments in light of the evidence as a whole. Concerning the judgment, the Judge found that it was one of Applicant's unpaid debts. However, the bankruptcy filings state that it was a judgment against his wife. Despite this, we find no reason to conclude that the Judge would have rendered a different decision if he had explicitly found that the judgment was against Applicant's wife, insofar as it was included in their joint petition for bankruptcy. Applicant's arguments do not undermine the Judge's conclusion that his financial problems were generally the result of his own conduct and that Applicant had the financial means to address his problems before resorting to bankruptcy. The Judge's material findings of security concern are based upon substantial evidence or constitute reasonable interpretations of the evidence. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. An applicant who fails to discharge his or her legal obligations, such as paying taxes when due, may be lacking in the judgment and reliability expected of those with access to classified information. *See, e.g.*, ISCR Case 14-06808 at 2 (App. Bd. Nov. 23, 2016); *See also Cafeteria and Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). The Judge's findings that Applicant had failed to disclose the true extent of his financial problems support his adverse credibility determination. We give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Moreover, the Judge's findings about Applicant's income and the relationship of his spending choices to his financial delinquencies, and about the timing of his effort at tackling his delinquent debts, constitute a reasonable interpretation of the record. *See, e.g.*, ISCR Case No. 14-01243 at 3 (App. Bd. Jun. 18, 2015).

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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for access national security eligibility will be resolved in

¹Applicant's assertions on this point were contained in his Response to the File of Relevant Material. He provided no evidence to corroborate his claim. It is Applicant's burden to produce evidence in mitigation. Directive ¶ E3.1.15.

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