

KEYWORD: Guideline F

DIGEST: A Judge has no authority to promise an applicant a clearance or to advise an applicant on the quantum of evidence that would mitigate the concerns in his or her case. Adverse decision affirmed.

CASENO: 16-00420.a1

DATE: 08/07/2017

DATE: August 7, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-00420
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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 June 3, 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 May 22, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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.

The Judge's Findings of Fact

Applicant's SOR lists several delinquent debts, for mortgage accounts, credit cards, etc. Applicant owned several pieces of real estate. Due to the economic downturn in 2008, he was not able to make his mortgage payments. Ultimately he stopped paying on the properties and they went into foreclosure. He presented Form 1099-As showing that the properties had been foreclosed, but these documents did not establish that any resulting tax obligations had been satisfied. The Judge stated that "the purchase and ultimate foreclosure of each property must also be considered adversely as to Applicant's overall financial acumen and responsibility." Decision at 3. Applicant also had significant credit card debt that he failed to pay. He did not provide evidence that these debts had been satisfactorily resolved. Applicant hired a lawyer to assist him in addressing his financial problems. He discovered that this person was not providing adequate representation, so he terminated the relationship.

The Judge's Analysis

The Judge noted evidence that Applicant's financial problems resulted from the recent economic downturn, which was a circumstance beyond his control. However, after discovering that the attorney was not fulfilling his professional obligations, Applicant did not undertake responsible action to resolve his debts himself. The Judge stated that some debts in significant amounts are still outstanding and that Applicant has not shown that his financial status is stable and clear.

Discussion

Applicant contends that he submitted the Form 1099-As at the Judge's suggestion, yet the Judge made an adverse decision anyway. Applicant argues that if these documents were not sufficient to mitigate the concerns in his case, the Judge should not have recommended that he provide them. He also states that there is other evidence that he could have provided if the Judge had advised him to do so.

It goes without saying that a Judge has no authority to promise an applicant a clearance or to advise an applicant on the quantum of evidence that would mitigate the concerns in his or her case. *See, e.g.*, ISCR Case No. 14-02806 at 3, n.1 (App. Bd. Sep. 9, 2015); ISCR Case No. 09-06602 at 2 (App. Bd. Jan. 28, 2011). Among other things, a Judge cannot conclude that evidence is relevant and assign weight to that evidence before he or she has seen it. In addition, a Judge has no authority to serve as an investigator in a case, which would be inconsistent with his or her role as an independent fact finder. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015). In this case, we find no reason to conclude that the Judge did so. During the course of Applicant's presentation, the Judge and Department Counsel inquired about evidence that might corroborate some of Applicant's testimony. For example, Department Counsel stated during cross-examination that Form 1099-As were documents that Applicant would want to present. Tr. at 65. Later, the Judge asked Applicant if he had paid taxes on any debts that had been forgiven, and Applicant

replied that he had. The Judge advised him that he could provide documentary proof of this along with other evidence that he intended to submit post-hearing. Tr. at 70-71.¹ The Judge did not promise to Applicant that if he provided any such documents he would obtain a favorable decision. We resolve this issue adversely to Applicant. Beyond this, Applicant’s argument amounts to disagreement with the Judge’s weighing of the evidence, which is not enough 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. 15-08842 at 3 (App. Bd. Feb. 14, 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, Encl. 2, App. A ¶ 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**.

¹ “[Judge]: Did you ever pay taxes on the 1099s? [Applicant]: They were definitely part of my tax returns. Definitely. [Judge]: They were? Okay. Well, if you get them—as [Department Counsel] said—submit them to him.”

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