

KEYWORD: Guideline F

DIGEST: Given the record that was before him, the Judge did not err in his analysis of Applicant’s security concerns, nor did his failure to have made explicit findings about Applicant’s wife’s circumstances draw into question the way in which he evaluated Applicant’s case for mitigation. Adverse decision affirmed.

CASENO: 16-00495.a1

DATE: 09/20/2017

DATE: September 20, 2017

In Re:)	
)	
-----)	ISCR Case No. 16-00495
)	
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 June 8, 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 decision on the written record. On June 16, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 considered all of the evidence in the record and whether the Judge's adverse determination was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has over \$14,000 in delinquent debts. They include a mortgage loan, a credit card, and two medical accounts. Applicant acquired the mortgage in 2006, when he and other family members bought a house to use for vacation purposes. The price of the house was \$450,000. Although all of the members were to contribute to the mortgage payment, only Applicant and his wife were named on the loan. Over time, other family members stopped making payments, leaving Applicant and his wife solely responsible. The couple has put the house on the market but there is no evidence that it has been sold. Applicant has not provided evidence of payment or settlement of the other SOR debts. Although he entered into a debt payment program, the covered debts are not shown in the document that he provided. Applicant submitted no information about his current financial situation or a budget.

The Judge's Analysis

Applicant provided insufficient information to show that his problems are unlikely to recur. He provided no evidence that his debts resulted from circumstances beyond his control. The largest debt, the mortgage, was a business transaction that Applicant entered into with relatives and regarding which Applicant assumed the economic risk. He provided no evidence of payments toward any of his debts.

Discussion

Applicant's brief includes documents and assertions from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant notes that the Judge did not make findings about his wife's injury and resulting medical expenses or about her having changed employers. Both of these matters were addressed in Applicant's Response to the SOR. He also cites to other evidence that he believes is pertinent to his financial situation, such as his debt consolidation plan.

First, we note that the Judge incorporated Applicant's SOR admissions into his Findings of Fact. Accordingly, he did not need to repeat these admissions elsewhere. Decision at 2. Second, a Judge is not required to make explicit findings about every piece of evidence, which is a practical impossibility. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). Though he must consider all of the evidence, a Judge may limit his findings to those that are material to his analysis, which the Judge appears to have done here.

In his response to the SOR, Applicant discussed his wife's injury and expressed hope that an expected legal settlement could provide a means for paying debts. He did not otherwise mention this injury in the SOR Response or in his Response to the File of Relevant Material. In particular, Applicant did not draw attention to this injury as a cause of his financial problems. Furthermore,

he did not provide any specific information as to costs, lost income, etc. from the accident. He provided no corroboration for the accident or any financial impact. Applicant's SOR Response did state that his wife's changed job situation affected their financial problems, although he did not present it as the principal reason the couple could not afford the mortgage payments on the investment property. The Judge's interpretation of the evidence, including the SOR Response, was that Applicant's problems resulted from the foreseeable risks of a real estate venture such as the one presented in the record, which interpretation was reasonable. Given the record that was before him, the Judge did not err in his analysis of Applicant's security concerns, nor did his failure to have made explicit findings about Applicant's wife's circumstances draw into question the way in which he evaluated Applicant's case for mitigation. 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

DISSENTING OPINION OF ADMINISTRATIVE JUDGE JAMES F. DUFFY

I disagree with my colleagues. As the majority opinion states, the Judge did not make any findings of fact about the employment or medical issues that Applicant's wife encountered. In his response to the SOR, Applicant stated that his wife was the largest source of the household's income and that her job was eliminated when her employer merged with another company in 2013. Although his wife obtained another job at a later unspecified time, her income was reduced by approximately 33% from what she earned in her previous job. Applicant also noted that his wife was injured in a traffic accident in 2015 and underwent various medical treatments, including surgery. In the decision, the Judge erred by stating, "Applicant presented no evidence that the debts were due to circumstances beyond his control." Decision at 5. In light of that statement, the Judge also apparently did not consider as a condition beyond Applicant's control the decision of his relatives to renege on an agreement that left him and his wife solely responsible for a vacation property mortgage.¹ Additionally, Applicant and his family members purchased the property shortly before the real estate market collapse. While Applicant did not provide many details about these conditions beyond his control, I cannot conclude that the Judge's error in not analyzing such evidence under mitigating condition 20(b) was harmless.² Accordingly, I would remand the decision to the Judge for appropriate corrective action.

¹ In the appeal brief, Applicant stated the vacation property was sold with no loss to the lender. This sale apparently occurred after the record closed.

² Directive, Encl. 2, App. A ¶ 20(b) states: "the conditions that resulted in the financial problem were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances[.]"

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board