

KEYWORD: Guideline F; Guideline E

DIGEST: Despite Applicant’s arguments to the contrary, the Judge’s findings and analysis are consistent with the record that was before her. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASENO: 16-00757.a1

DATE: 07/24/2017

DATE: July 24, 2017

In Re:	)	
-----	)	
Applicant for Security Clearance	)	ISCR Case No. 16-00757

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Shane C. Brengle, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 24, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 1, 2017, after the hearing, 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 failed to consider all of

the evidence; whether the Judge's application of the mitigating conditions was erroneous; and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant served in the military, rising to the grade of E-5. He has worked for his present employer, a Government contractor, since early 2010. Applicant's SOR lists two delinquent debts, both for credit cards. One of them, for a little over \$10,000, saw its last activity in 2008. Applicant stated that he did not know why he failed to pay this account, although he noted that he had experienced health problems in 2015, which caused him to delay making payments. Although he did not contact the original creditor, he did receive communications from the collection agency that acquired the debt. He stated that he contacted the creditor after receiving phone calls and letters from him. Applicant entered into an agreement to pay \$25 monthly from December 2016 until November 2017, although the creditor advised that this agreement would not be sufficient to resolve the account. Although he demonstrated that he made payments in January and February 2017, he did not account for his required payment the previous December or for a plan to make payments beyond November 2017.

Applicant attributed his financial problems to a decrease in income and to his wife's medical expenses as well as to his own. Applicant has earned about \$105,000 annually for the past three years and he has received financial counseling. He states that he recently received a large tax refund that he is saving in the event he loses his job.

When Applicant completed his security clearance application (SCA), he did not disclose his delinquent debts. He stated that he was not sure why he checked "no" on the SCA. He stated that he failed to disclose one of the credit card debts because he had started paying it, and, therefore, in his mind it was not delinquent. The Judge stated that she did not find Applicant's testimony to be credible.

A co-worker testified that Applicant's duty performance is consistently above average. Applicant enjoys an excellent reputation for honesty, trustworthiness, reliability, and loyalty.

### **The Judge's Analysis**

The Judge resolved one of the two credit card debts in Applicant's favor. Regarding the other one, however, she concluded that it is recent in that it is ongoing and that he had failed to provide a reasonable explanation for his failure to pay. She stated that there is not enough evidence to show that Applicant's problems are under control. That he has repeatedly been contacted by the creditor undermines the extent to which the payment plan described above constitutes a good-faith effort to resolve the debt.

Regarding Guideline E, the Judge reiterated her conclusion that Applicant's explanations for his omissions from the SCA were not credible, noting evidence that Applicant had been called and had received letters over the years. She stated that there is no evidence that Applicant attempted a good-faith correction of his omissions. She stated that they are serious and cast doubt on his reliability, trustworthiness, and good judgment.

## Discussion

Despite Applicant's arguments to the contrary, the Judge's findings and analysis are consistent with the record that was before her. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither 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). We have given due consideration to the Hearing Office case that Applicant has cited. However, each case must be decided upon its own merits. Directive, Encl. 2, App. A ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 15-01416 at 3 (App. Bd. Feb. 15, 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 national security eligibility 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: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board