

KEYWORD: Guideline F

DIGEST: Applicant’s debts are numerous, recent, and were not incurred under circumstance making them unlikely to recur. He encountered conditions beyond his control, but has not acted responsibly. Adverse decision affirmed.

CASENO: 16-01788.a1

DATE: 05/30/2017

DATE: May 30, 2017

In Re:)	
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Applicant for Security Clearance)	
)	ISCR Case No. 16-01788

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Richard L. Morris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 1, 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 February 21, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. His credit reports reflect a charged-off second mortgage for about \$108,000, two collection accounts totaling about \$3,000, and five delinquent medical bills totaling about \$900.

Married and divorced twice, Applicant has no children. His latest divorce was contentious, took five years to complete, and was granted in 2015. While that divorce was pending, he made monthly payments to his wife, but was unable to afford payments on his first and second mortgages. The lender foreclosed on the first mortgage in 2010. He continued to make payments on the second mortgage until sometime in 2011, and it was charged off in 2015. He testified that he attempted to contact the lender of the second mortgage but provided no documentation of those efforts or knew if the lender went out of business. When advised during a background interview that the second mortgage was charged off, he thought the debt was canceled and need not be paid.

Applicant was unaware of the delinquent debts until his background interviews in 2016. All the debt became delinquent because of his marital breakup. After becoming aware of the debts, he made no effort to pay them. In late 2016, he filed bankruptcy, but the records do not include a list of creditors involved in the bankruptcy, and there is no evidence that this case has progressed beyond the initial filing.

Applicant's recent credit report reflects no new debts or adverse information. He has a net monthly remainder of about \$1,200. Two individuals testified that he is honest, trustworthy, and reliable.

The Judge's Analysis

Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. He encountered conditions beyond his control, but has not acted responsibly. His testimony about his attempt to contact the lender of the second mortgage was vague, unspecific, unsupported by documentary evidence, and unconvincing. He credibly testified that he believed the charged-off mortgage loan was canceled, but had not credibly explained why he took no significant action to resolve that debt between 2011 and his background interview in 2016. He took no significant action to resolve the delinquent debts until his security clearance hearing was imminent. His bankruptcy is in its infancy and sufficient time has not elapsed to show a track record of complying with a Chapter 13 payment plan.

Discussion

In the appeal brief, Applicant submitted documents regarding his bankruptcy that were not previously submitted to the Judge for consideration. These documents constitute new evidence that the Appeal Board cannot consider. Directive E3.1.29.

Applicant contends that the Judge did not consider all of the evidence. For example, he argues that his marriage separation and acrimonious divorce were not foreseen and that the collection accounts and medical debts were incurred by his ex-wife after their separation. The Judge made findings about some of these matters and addressed them in his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016).

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. The presence of some mitigating evidence does not compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A parties disagreement with the Judge's weighing of the evidence, or the ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No 15-00650 at 2 (App. Bd. Jun. 27, 2016.) We also find no error in the Judge's whole-person analysis.

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

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board