

KEYWORD: Guideline F

DIGEST: Applicant’s arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 12-10545.a1

DATE: 06/09/2017

DATE: June 9, 2017

<p>In Re: _____</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 12-10545</p>
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Roxana Aftahi, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 30, 2015, 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 March 21, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 36-year-old employee of a Federal contractor. His security investigation revealed seven SOR debts totaling over \$67,000. He testified that most of the SOR debts originated from a two-year period of underemployment in the mid-2000s but also claimed his financial problems were due to providing financial assistance to his then girlfriend with whom he would gamble at least twice a year. Between 2000 and 2015, he also provided substantial financial support to his mother.

Applicant admitted that he received unemployment benefits while working full time. The state initiated legal action against him to recover the overpayment of unemployment benefits. He testified that he has been making phone calls to file a complaint about a lien filed against him, but submitted no written dispute.

Applicant admitted two judgments were for delinquent student loans totaling about \$41,000. He submitted evidence showing payments toward the student loans in 2008 and 2009, but provided no documentary evidence of payments since then. He is currently disputing the student loans and believes that the statute of limitations for their collection has passed.

Applicant submitted documents reflecting purported payments on a \$15,000 debt. The documents, however, fail to show that debt was paid or a connection between the company receiving the payments and the alleged creditor. Moreover, the payments were for than less than the alleged amount and no evidence was presented of a settlement.

Applicant has received financial counseling. He provided evidence of efforts to resolve other debts and documents showing he is a good employee.

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

The Judge found in favor of Applicant on three debts that he paid. Applicant also paid other debts not alleged in the SOR and seems to be in control of his current finances. Nevertheless, he received unemployment benefits while being fully employed and has refused to pay back the money. He paid some money on his student loans, but then waited for the passing of the statute of limitations to dispute them. He did not establish applicability of the statute of limitations to his student loans. He claims he paid another debt, but failed to provide substantiating evidence. Considering the evidence as a whole, including his demeanor while testifying, his past financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment.

### **Discussion**

Applicant essentially argues that the Judge did not consider all the relevant evidence and

mis-weighed the evidence in applying the mitigating conditions and whole-person concept. He cites to, among other matters, his periods of underemployment, the financial support he provided to his girlfriend and mother, and his good character evidence. However, the Judge made findings about those matters. Applicant's arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor 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. 15-07277 at 3 (App. Bd. Apr. 26, 2017). We give due consideration to the Hearing Office case that Applicant cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* Additionally, the Judge complied with the requirements of the Directive in his whole-persons analysis by considering the totality of the evidence in reaching his decision.

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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, 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