

KEYWORD: Guideline F

DIGEST: Applicant cites to favorable comments in Department Counsel’s closing argument, for example Counsel’s view that Applicant has gone a long way toward resolving the Government’s concerns. Arguments by parties are not evidence. In the case before us, the record viewed as a whole supports the Judge’s decision. Adverse decision affirmed.

CASE NO: 14-02290.a1

DATE: 01/30/2017

DATE: January 30, 2017

In Re:)	
)	
-----)	ISCR Case No. 14-02290
)	
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 March 28, 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 November 16, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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

The Judge made the following findings pertinent to the issues raised on appeal: Applicant has been employed by a Defense contractor since 2002 and is seeking his first DoD security clearance. He and his wife have two children from their marriage, and his wife has two from a previous one.

Applicant and his wife purchased a house in 2003, the loan for which was secured by a mortgage. Three years later, they obtained a \$40,000 home equity loan on the house in order to make an addition to it. Applicant and his wife have a history of allowing their mortgage and the equity loan to become 90 days past-due.

In 2008, Applicant's wife started a business, and the couple's income declined substantially. In addition, the wife's younger son moved in with his father, resulting in a loss of child support payments of about \$1,000 a month. By January 2013, Applicant and his wife were nearly \$20,000 in arrears on their equity loan. As of January 2014, they had made no payments toward resolving this delinquency. This loan was modified in May 2015, with a new payment of nearly \$900 a month, which he found unaffordable. In January 2016, Applicant engaged a debt resolution company to negotiate the restructuring of the equity loan. No payment has been made on this loan for several months. In addition to this, Applicant owes \$99 for a medical debt. Moreover, although this was not alleged in the SOR, Applicant has been 30 days behind on car payments for several months in 2015 and 2016.¹

Applicant's wife's business has outgrown its office space and is looking to purchase a building for its operations. The business now has seven employees and is becoming the largest of its kind in the state.

The Judge's Analysis

The Judge resolved some allegations in Applicant's favor, notably one concerning a delinquent mortgage. Concerning the equity loan, however, she noted that Applicant has become delinquent in payments, despite consistent employment for many years and despite his wife's business success. She stated that there was no apparent reason for this delinquency, such as unforeseen circumstances, etc. She noted the loan modification, but found that the evidence does not include specifics about trial payments that Applicant may have made before the lender would agree to the modification. She stated that, without a repayment plan in place and a record of consistent payments, she could not conclude that Applicant had mitigated concerns arising from this debt. She also resolved the \$99 medical bill adversely to Applicant.

¹The missed car payments were not alleged in the SOR. Acknowledging that non-alleged conduct can be considered for certain limited purposes, the Judge stated that she was considering them for Applicant's judgment and his case for mitigation. Decision at 4, n.1. *See, e.g.*, ISCR Case No. 09-07219 at 5 (App. Bd. Sep. 27, 2012).

In the whole-person analysis, the Judge stated that Applicant has not made sufficient progress in resolving the equity loan, noting that it was 120 days past due as of February 2016.² She stated that promises to pay debts in the future are not a substitute for a track record of financially responsible behavior. She also noted the late payments on Applicant's automobile loan and that neither Applicant nor his wife could explain their failure to make timely payments on their various obligations.

Discussion

Applicant cites to evidence that he believes is favorable to him, such as his efforts to address the equity loan, circumstances attending his wife's business start-up, etc. 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). 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. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Applicant cites to favorable comments in Department Counsel's closing argument, for example Counsel's view that Applicant has gone a long way toward resolving the Government's concerns. Tr. at 78. Arguments by parties are not evidence. *See, e.g.*, ISCR Case No. 14-03392 at 2, n.3 (App. Bd. Apr. 15, 2015). In the case before us, the record viewed as a whole supports the Judge's 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."

²The record shows that the hearing took place on March 23, 2016. Tr. at 1.

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. 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