

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Applicant’s argument is, in large measure, a disagreement with the Judge’s weighing of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

CASE NO: 14-06050.a1

DATE: 02/28/2017

DATE: February 28, 2017

In Re: _____ Applicant for Security Clearance))))))))	ISCR Case No. 14-06050
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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 February 4, 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 December 2, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 has worked for a Defense contractor since late 2009. He has worked in similar positions since 2004, the year in which he retired from the Federal Government. He has held a clearance since 1973.

Applicant's SOR alleges a number of delinquent debts, totaling over \$150,000. He entered into repayments plans for some of them, though only after the creditors had sued for collection. Creditors forgave three of Applicant's debts, and he testified that he had included the forgiven amounts on his tax return. Applicant's wife died in 2001, cutting the family income by 40%. However, Applicant did not change his spending habits to accommodate his new circumstances. He made no effort to address his debts from 2001 until 2010, when his money ran out.

In 2011, Applicant consulted a bankruptcy attorney. He learned that he could not apply under Chapter 7 because his income was too high. He later decided not to file under Chapter 13 either, because he would have to pay at least 25% of his outstanding debt, which he believed would be onerous. "The main piece of advise Applicant accepted from his attorney was to only deal with his creditors if they took him to court to collect the debt." Decision at 3.

Applicant's income from his current job is \$150,000 a year. He also receives \$97,000 annually in Federal retirement pay. Applicant's two sons live with him, one of whom suffers from disabilities. Applicant receives about \$13,200 a year in social security disability pay on behalf of this son. His other son earns about \$60,000 a year but does not contribute to the household expenses.

Applicant attributed his financial problems to his wife's death and the cost of caring for his disabled son. He has also provided assistance to a family friend. Applicant himself has experienced some medical problems recently. He admits that he does not have the money to pay his debts and that he has made little effort to contact his creditors. Applicant provided no evidence of financial counseling or of a budget. Neither did he provide evidence of the quality of his duty performance, character, community involvement, etc.

The Judge's Analysis

Applicant has satisfied none of the mitigating conditions. His delinquent debts are recent and frequent and are due largely to his lack of attention. Though his wife's death was outside his control, Applicant did not take responsible action in regard to his financial problems. His decision to follow his attorney's advise to wait out his creditors does not constitute a good-faith effort to pay his debts. The Judge reiterated his finding that Applicant had not received counseling. He concluded that Applicant's financial problems were not under control.

Discussion

Applicant contends that there is no record evidence that he is unreliable, untrustworthy, or otherwise lacking in qualities necessary to protecting national security. We construe this as an argument that his circumstances do not raise security concerns. The concern under Guideline F is that delinquent debts may cast doubt upon an applicant's judgment, self control, and other characteristics essential to protecting national security information. *See, e.g.*, ISCR Case No. 12-09719 at 2 (App. Bd. Apr. 6, 2016). In this case, the Judge's findings about Applicant's delinquent debts, viewed in conjunction with his substantial income, are sufficient to raise concerns about his judgement and self-control, which, in turn, impugn his ability to protect classified information. We find no reason to disturb the Judge's treatment of the disqualifying conditions set forth in the Directive.

Applicant cites to things such as the death of his wife and loss of her income, his consultation with a bankruptcy attorney, income and expenditure information (Applicant Exhibit E), his expenditures on behalf of his disabled son, his having held a clearance for many years, etc. The Judge made findings about the evidence that Applicant has discussed in his brief. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). His argument is, in large measure, a disagreement with the Judge's weighing of the evidence, which is not 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. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Applicant notes the Judge's finding that he had not submitted character references, evidence of job performance, etc. He argues that his investigative file contains "extensive testimony obtained from reliable present and former Government Security officials who attest to [his] work and character." Appeal Brief at 5. He states that there is no evidence that anyone gave consideration to this information.

However, in a DOHA proceeding, a Judge bases his or her decision strictly on the pleadings and on the evidence submitted by the parties. At the hearing, the Government's responsibility is to present evidence to establish those SOR allegations that have been controverted. Directive ¶ E3.1.14. It is the applicant's job to present evidence to mitigate security concerns raised by the SOR admissions, if any, and the Government's evidence. Directive ¶ E3.1.15. In this case, Department Counsel notified Applicant of the exhibits that he intended to offer at the hearing. Hearing Exhibit (HE) I (Letter dated January 5, 2016); Tr. at 19. Applicant submitted his own documentary evidence as well. Tr. at 26. There is nothing in HE I or anywhere else in the record that would have led Applicant to believe that the Judge would consider anything other than the documents and testimony presented by the parties and admitted into the record. Moreover, HE I specifically stated to Applicant that he could present character witnesses if he so chose. Accordingly, the nature and extent of Applicant's evidence in mitigation was a consequence of his decisions after having received adequate guidance as to his rights and responsibilities at the hearing. Applicant's argument does not raise an issue of harmful error by the Judge.

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