

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 15-01416.a1

DATE: 02/15/2017

DATE: February 15, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-01416
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 17, 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). On November 23, 2016, after conducting a hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuider 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 retired after 30 years of Government service, after which she has continuously worked for a Defense contractor. Applicant has held a clearance since 1984, and there is not evidence in the record of security violations.

Applicant is indebted to a bank for a recreational vehicle. After purchasing it, she returned it to the creditor, who subsequently advised her that the vehicle was sold, leaving a deficiency of about \$114,000. The creditor has not waived collection of this debt. Applicant claimed that she had sufficient funds to pay this debt "if it resurfaces." Decision at 3. Applicant also owes about \$23,000 for a charged-off debt to a bank. There is no evidence that Applicant has contacted the current holder of this debt or made any attempt to pay it. Finally, she owes over \$500 on a time share. Though Applicant asserted that the debt has been satisfied, there is no documentary evidence in support of her assertion.

Applicant and her husband have about \$11,000 in monthly income. They helped their children with mortgages and school debts, and, in 2007, moved to another state. However, their annual income dropped by about \$100,000, because her husband did not have employment there. In addition, Applicant has had medical problems requiring surgery. She did not provide evidence of the cost of the surgery or that she lost pay while undergoing medical treatment. Applicant enjoys a good reputation for the quality of her work performance, trustworthiness, and honesty. She has a clean criminal record, and her character references support her effort to obtain a clearance.

The Judge's Analysis

The Judge resolved some of the allegations in Applicant's favor. However, he entered adverse findings for the three described above. Though noting things that affected her financial problems, such as her medical issues, the Judge concluded that moving to a new state without her husband obtaining employment did not merit full mitigation credit. He noted his finding that the cost of Applicant's surgery was not disclosed, and she did not present evidence of responsible action regarding those debts found against her. He noted that debts had dropped off Applicant's credit report. However, he stated that such evidence was not a meaningful measure of debt resolution. He stated that there is insufficient evidence as to why Applicant could not make more progress on resolving her debts. In the whole-person analysis, the Judge cited to what he termed a "lengthy history of delinquent debt." Decision at 10. He stated that Applicant had not provided enough evidence as to how she came to find herself in financial trouble or of what responsible action she had taken. He concluded that Applicant's failure to make greater progress showed a lack of financial responsibility.

Discussion

Applicant argues that the analysis contains inconsistencies regarding mitigating evidence. Even if Applicant's argument is correct, the errors did not likely affect the outcome of the case and, therefore, are harmless. She cites to mitigating evidence, such as her husband's loss of \$100,000

of annual income, her 30 years of Government employment, her having held a clearance for many years without incident of concern, and her character references. 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). Applicant has presented a Hearing Office case that she believes supports her effort to obtain a clearance. We give this case due consideration. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 15-04096 at 2 (App. Bd. Nov. 22, 2016).

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