

KEYWORD: Guideline F

DIGEST: We cannot consider new evidence on appeal. The Judge’s material findings are supported by substantial evidence. Ineffective assistance of counsel is not applicable in a DOHA proceeding. Applicant did not rebut the presumption that the Judge considered all of the evidence in the record. Applicant provided no reason to believe that the transcript contained errors that distorted his testimony or affected the outcome of the case. Adverse decision affirmed.

CASE NO: 15-02040.a1

DATE: 02/16/2017

DATE: February 16, 2017

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In Re:)
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Applicant for Security Clearance)
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ISCR Case No. 15-02040

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 October 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). Applicant requested a hearing. On November 22, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Stephanie Hess denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's findings contained errors and 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

In essence, Applicant's financial problems involved a real estate business that he and his wife operated. Pursuant to this enterprise, he purchased a home and rented it out. However, he missed some mortgage payments, and the house was the subject of a foreclosure sale in 2007. He purchased another home for over \$400,000 by means of an adjustable rate mortgage and took out a home equity loan as well. He sought to modify the loan, but his efforts were not successful. He also established a real estate management company to manage one rental room in his home. He rented it to his mother, who did not make payments while she was deployed overseas. Applicant was eventually granted a Chapter 7 bankruptcy discharge. In addition, Applicant calculated his business taxes improperly, and he and his wife did not have taxes withheld from their paychecks from 2009 until 2011. As of November 2015, Applicant owed over \$26,000 in Federal taxes and nearly \$20,000 to his state. Applicant has received favorable performance evaluations at his job, receiving awards in 2009 and 2014. He is considered trustworthy and committed to security.

The Judge's Analysis

The Judge concluded that Applicant's problems had not originated from circumstances outside his control and that he had not acted responsibly in regard to them. She cited to evidence that Applicant was delinquent in Federal and state taxes, that he had defaulted on two mortgage loans and a home equity loan, and had over \$8,000 in credit card debt charged off. She stated that there is no evidence to show that Applicant's finances are under control. Though noting installment plans for his tax obligations, she stated that Applicant had undertaken no action until after an IRS audit. She concluded that Applicant's financial problems were recent and were incurred under circumstances that cast doubt on his security worthiness. The Judge stated that Applicant had provided no plausible explanation for why he was not able to make his mortgage payments or what happened with the funds that should have been spent on them.

Discussion

Much of Applicant's appeal presentation consists of matters from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3. 1.29. Applicant challenges several of the Judge's findings. After considering the evidence as a whole, we conclude that the Judge's material findings are supported by substantial evidence. Applicant has not pointed to any harmful error in the Decision. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016). Applicant states that his attorney did not submit all of the evidence that he expected her to. The ineffective assistance of counsel doctrine is not applicable in a DOHA proceeding. *See, e.g.*, ISCR Case No. 10-06703 at 2 (App. Bd. May 4, 2012). Applicant cites to his efforts to improve his financial situation, his having held a clearance for many years without incident or concern, 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 argues that the hearing room had poor acoustics and the transcript contains errors. He provides selections from the transcript that he has annotated with corrections. A review of the transcript discloses no reference to any acoustical problems that had a harmful effect on Applicant’s ability to present his case. Applicant has provided no reason to believe that the transcript contains errors that distorted his testimony or affected the outcome of the case. *See, e.g.*, ISCR Case No. 14-04186 at 4 (App. Bd. Oct. 28, 2015).

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 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board