

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant’s arguments do not undermine the Judge’s findings and conclusions about an insufficiency of documentary evidence regarding his financial situation. Adverse decision affirmed.

CASE NO: 15-02198.a1

DATE: 01/18/2017

DATE: January 18, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-02198
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 25, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 25, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 in that it failed to consider relevant factors. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has worked for his employer, a DoD contractor, since 2010. Applicant's wife has three children, and Applicant has two from prior relationships. He retired from the military in 1998 as an E-5.

Applicant's wife was injured at work in 2010. She had eight surgeries that were not successful and, in 2012, lost her job. As a consequence, the household income decreased by about two-thirds, and the family was left with medical bills of about \$40,000. In addition, Applicant's daughter experienced medical problems requiring hospitalization for 90 days, and Applicant provided her with financial support. Applicant also provides support to his spouse's son. Applicant makes about \$46,000 a year. His former spouse receives 30% of his retirement pay. In addition, he receives about \$300 a year for a service-connected disability.

Applicant's SOR alleges a bankruptcy petition that was ultimately dismissed at his request. It also lists numerous delinquent debts, for such things as a timeshare repossession and collection debts owed to several banks, a department store, a gym, and other creditors. Applicant made no payments toward these debts, some of which have become delinquent since 2010. For some of them he did not maintain contact with creditors. Though he stated that he had attempted to set up payment plans, he does not have actual payment agreements with any of the creditors.

Applicant enjoys an excellent reputation for honesty, diligence, and trustworthiness. He is highly regarded for leadership and integrity. The authors of Applicant's character references support his effort to obtain a clearance.

The Judge's Analysis

As noted above, the Judge entered favorable findings under Guideline E. However, he made adverse findings for the delinquent debts. He cited to evidence that Applicant's financial problems were affected by circumstances outside his control, that is, his wife's illness and the financial needs of his children. The Judge stated, however, that Applicant did not provide sufficient information about how these circumstances affected his finances or how he had demonstrated responsible action. The Judge noted that Applicant held stable employment for several years, concluding that "he should have been acclimated to his spouse's loss of income." Decision at 7. Though resolving the bankruptcy allegation in Applicant's favor, he stated that there was insufficient evidence to show why Applicant had made no more progress in resolving his debts.

The Judge cited to favorable evidence, such as Applicant's military career, his character references, his clean criminal record, etc. He concluded, however, that this was not enough to outweigh the concerns arising from the SOR debts. He noted that Applicant did not submit documents showing changes in his income, nor did he show how he attempted to reduce his

expenses. Neither did Applicant provide documents showing payment histories of other, non-alleged debts, such as his mortgage, student loans, a vehicle lien, and credit card accounts.

Discussion

Applicant contends that the Judge failed to consider relevant factors. *See, e.g.*, ISCR Case No. 14-02563 at 3 (App. Bd. Aug. 28, 2015). He cites to record evidence of such things as his wife's medical problems, his military career, his having held a clearance for many years without incident or concern, etc. This argument is not enough to rebut 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 argues that he has changed his spending habits and is current on necessities. However, this 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). In particular, Applicant's arguments do not undermine the Judge's findings and conclusions about an insufficiency of documentary evidence regarding his financial situation.

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: William S. Fields
William S. Fields
Administrative Judge

Member, Appeal Board