

KEYWORD: Guideline B; Guideline F

DIGEST: A clearance decision may be based not only on conduct but also upon circumstances unrelated to conduct. The mere existence of foreign family members is well established as a possible basis for a security clearance denial. Adverse decision affirmed.

CASE NO: 15-05289.a1

DATE: 01/12/2017

DATE: January 12, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-05289
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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 March 25, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 19, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 and Analysis

Applicant was born in the United States. His mother, who resides with him, was born in Mexico and came to the United States illegally in the 1980s. He supports her financially. She has never taken any steps to gain legal immigration status in the United States. He and his mother have no contact with anyone in Mexico. In her Guideline B analysis, the Judge noted, "Applicant is in a unique situation where he could be a target to Mexican nationals and subjected to coercion or blackmail if his mother were subjected to deportation or other threats of harm." Decision at 6.

The Judge found against Applicant on a delinquent credit card debt in the approximate amount of \$2,161 that remains unresolved. He made his last payment on that debt in 2009 and has not had any contact with the creditor since 2013. He stated that he plans to pay this debt. The Judge also found against Applicant on a payday cash advance loan in the approximate amount of \$300 that remains unresolved. The Judge found in favor of Applicant on the four other Guideline F allegations.¹ The Judge noted that Applicant has not started the process of resolving his debts, that he brings in more income than he spends but lives paycheck to paycheck, and that he has not shown an ability to pay all of his delinquent debts and live within his means. The Judge concluded his history of financial indebtedness has not been mitigated.

Discussion

In his appeal brief, Applicant acknowledged that his mother is an illegal alien in the United States and stated, ". . . I feel that the decision to not give me a security clearance was mainly influenced by her status and not by my own actions." We construe this comment to mean that he believes the Judge's conclusion under Guideline B is unfair because it was not based upon his conduct. As the Supreme Court stated in *Department of the Navy v. Egan*, 484, U.S. 518, 528-529 (1988), a clearance decision may be based not only on conduct but also upon circumstances unrelated to conduct. The mere existence of foreign family members is well established as a possible basis for a security clearance denial. Directive, Enclosure 2 ¶¶ 6 and 7. It also merits noting that the Government is not required to provide direct evidence of a nexus between an applicant's circumstances and the pertinent security concern. The Directive presumes a nexus or rational connection between proven conduct under any Guideline and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 09-07565 at 3 (App. Bd. Jul. 12, 2012).

Applicant also argues that the denial of his security clearance was unfair because his "only fault" was having a small debt that he was currently working on a plan to pay off. Of note, nothing in Guideline F indicates that there is any particular threshold amount of delinquent or otherwise resolved debts that must be reached before an applicant's financial difficulties raise a security

¹ The Judge found that a collection account for about \$180 remained unresolved, but made a formal finding in favor of Applicant on that debt.

concern. *See, e.g.*, ISCR Case No. 02-10168 at 4 (App. Bd. Aug. 1 2003). Applicant’s arguments concerning his financial problems amount to a disagreement with the Judge’s weighing of the evidence, which is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). The lack of any action to resolve some of the alleged debts over a significant period was a sufficient basis for the Judge’s determination that the security concerns arising from Applicant’s financial problems remained unmitigated.

Applicant has failed to identify any harmful error. “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, supra*, at 528. *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