

KEYWORD: Guideline F

DIGEST: Applicant also contends the Judge's conclusion were supported by low probabilities rather than certainties. The Directive does not require that findings of fact or conclusions be supported by certainties. A Judge's findings of fact need only be supported by substantial evidence. Adverse decision affirmed.

CASENO: 16-03712.a1

DATE: 05/17/2018

DATE: May 17, 2018

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| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 16-03712 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
| _____                            | ) |                        |

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ray Wall, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 5, 2017, 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 February 7, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer Goldstein 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 discussion, we affirm the Judge’s decision.

### **The Judge’s Findings of Fact**

Applicant served in the military for over 20 years and retired in 2013. The SOR alleged that he had two delinquent debts. He admitted both debts relate to a home he purchased in 2004. One of the debts is a first mortgage that was delinquent for about \$24,000 with a balance of about \$250,000. The other is a second mortgage obtained from a different creditor in 2007 that was delinquent for about \$34,000.

Applicant lived in the home in question until he received military orders for another duty station in 2010. He was unable to sell the home at that time due to a decline in the market. He leased it for three years. Later, he was reassigned to a military base near the home. When the renters vacated the property, he reoccupied the home from about the later part of 2012 to early 2014. He had two short-sale offers on the home that were not approved because the two creditors were unable to work with each other to accept the terms of the sale. He ceased making payments on the first mortgage in late 2014 and on the second mortgage in early 2015.

In 2014, Applicant purchased a new home in the same area that was financed with a loan for \$288,000. He was hoping a pending short-sale offer would be approved. In 2015, he purchased a new car for \$56,000 and around that time his wife also purchased a luxury car. In 2015, he stopped communicating with the second mortgage holder and believes that loan has been sold to a collection company. In 2016, he submitted a deed in lieu of foreclosure that was rejected. In his post-hearing submission, he submitted a modification application for the first mortgage, but no documentation was presented that establishes if the proposed modification was approved. At the close of the hearing, he was still liable on both mortgages.

Applicant received a Chapter 7 bankruptcy discharge in 2000 and also had a vehicle repossessed that year. These matters were not alleged in the SOR.

### **The Judge’s Analysis**

Applicant's financial problems were the result of a strategic default on the two mortgages. While the decline in the housing market and his receipt of military orders were conditions beyond his control, he did not present evidence that he acted responsibly under the circumstances. Although he attempted to address these debts through short sales and a deed in lieu of foreclosure, he purchased another home and expensive vehicles at about the time he defaulted on the mortgages. He has a pattern of financial irresponsibility and has done little to show similar problems are unlikely to recur. His finances are not yet under control. He failed to mitigate the alleged security concerns.

## **Discussion**

In his appeal brief, Applicant provided a document marked as Exhibit A that he contends was "submitted in the record." Appeal Brief at 1. The record does not support that contention. Exhibit A constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29.

Applicant also contends the Judge's conclusion were "supported by low probabilities rather than certainties." Appeal Brief at 1. The Directive does not require that findings of fact or conclusions be supported by certainties. A Judge's findings of fact need only be supported by substantial evidence, *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1 and ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018). The substantial evidence standard is less than the preponderance of evidence standard. *See, e.g.*, ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999).

Applicant further contends that the decision did not correctly reflect that he purchased the second home while the first home was rented. The Judge found that Applicant lived in the first home in 2014 after renters vacated it and that he purchased the second home in 2014. In a footnote, the Judge notes there was conflicting evidence about when exactly he lived in the first home during that time period. We note that Applicant testified that he briefly resided in the first home before moving into the second home. Tr. at 36-40. Applicant failed to establish the Judge erred in considering the record evidence or in making her findings of fact.

Additionally, Applicant argues that this case involves a complicated set of facts, including his interaction with creditors and there is no evidence he deliberately failed to pay his debts. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017).

Applicant’s appeal brief fails to establish the Judge committed any harmful error. 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board

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