

KEYWORD: Guideline E; Guideline F

DIGEST: The challenged finding was that Applicant had not provided documentary corroboration of payment of any of his non-mortgage debts. This comment is consistent with the record that was before the Judge. Adverse decision affirmed.

CASENO: 17-00966.a1

DATE: 09/13/2018

DATE: September 13, 2018

In Re:)	
)	
-----)	ISCR Case No. 17-00966
)	
Applicant for Security Clearance)	

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 May 23, 2017, 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 May 22, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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 of fact contained errors and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. 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

The Judge made the following findings pertinent to the issues raised on appeal: Applicant worked for many years as a civilian employee of the Federal Government. Since 2014 he has worked for a DoD contractor. Applicant’s SOR alleges, and his credit reports establish, that he has fourteen delinquent debts. He claimed to have been making monthly payments on one of them since early 2014 but provided corroboration for only three payments. “There is no documentary evidence of any other payments or payment arrangements on Applicant’s non-mortgage debts.” Decision at 2.

Applicant’s debts include first and second mortgage accounts. He did not follow the advice of an attorney to attempt a short sale, hoping that the housing market would improve. He received a modification of this loan but did not make consistent payments. In fact, from late 2014 until January 2017, he made no mortgage payments. He received another modification, and was also advised to file for bankruptcy. He provided no documentary evidence to show that he is adhering to his modification agreements.

Applicant attributed his financial problems to several things. First, in 2010, his spouse closed her business. Second, in 2011, Applicant’s own business slowed, and his spouse was again unemployed. Third, in 2012, Applicant’s son was in a serious automobile accident, with the result that Applicant has financially supported him. Applicant’s wife is currently employed. Their monthly household take-home income is about \$12,000.

The Judge’s Analysis

The Judge stated that Applicant had not yet addressed most of his debts. He noted Applicant’s evidence of circumstances outside his control that affected his financial health. However, he found that those circumstances had become less serious after his spouse’s employment and his son’s recovery from an accident. He stated that Applicant had not provided documentary evidence of debt resolution or otherwise to show that he had engaged in responsible action. The Judge noted that Applicant had sought advice from a professional counselor and attorneys, although

he did not follow their recommendations. He has not provided a budget and most of his debts remain unaddressed.

Discussion

Applicant contends¹ that the Judge's findings of fact contained errors. We examine a Judge's findings to see if they are supported by substantial evidence, that is, "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. *See also* ISCR Case No. 17-00506 at 3 (App. Bd. Aug. 7, 2018).

Among other things, Applicant argues that he presented evidence of debt payment that preceded the issuance of the SOR. Applicant is correct that he testified about debt payments going back several years. Tr. at 68-69. He also provided written statements to that effect (Applicant Exhibit A, for example) and made some references to debt payment in his security clearance application. However, the challenged finding was that Applicant had not provided documentary corroboration of payment of any of his non-mortgage debts. This comment is consistent with the record that was before the Judge.

Applicant draws our attention to other statements in the Decision that he believes are untrue, for example concerning his employment history, the extent to which he followed the advice of his attorneys, the extent to which his unfortunate circumstances have abated, etc. Even if the Judge erred as Applicant contends, any such errors did not likely affect the outcome of the case and, therefore, were harmless. After considering Applicant's arguments in their entirety, we conclude that Applicant has not cited to any harmful error in the Judge's decision and that the Judge's material findings are based on substantial evidence or constitute reasonable inferences from the evidence. *See, e.g.*, ISCR Case No. 16-02640 at 3 (App. Bd. Jul. 2, 2018).

The balance of Applicant's brief is, in effect, a challenge to the way in which the Judge weighed the evidence. A disagreement with the Judge's weighing of the evidence or an ability to argue for an alternative interpretation of the record 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. 17-01181 at 4 (App. Bd. Apr. 30, 2018). Neither are Applicant's arguments sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-02391 at 4 (App. Bd. Aug. 7, 2018). Moreover, we conclude that the Judge's whole person analysis complies with the requirements of Directive ¶ 6.3, in that he considered the totality of the evidence in reaching his decision.

¹While the case was pending on appeal, Applicant sent in a second submission. Only one appeal brief is authorized by the Directive. The second submission arrived after the date Applicant's brief was due. (*See* Directive ¶E3.1.30) The second submission referred to matters outside the record which the Board cannot consider (*See* Directive ¶E3.1.29). The second submission has been placed in the file.

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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board