

KEYWORD: Guideline F

DIGEST: The record does not support Applicant's denial of due process claim. At the hearing Applicant submitted exhibits which were admitted into the record. The judge then left the record open for Applicant to submit further documentation. Adverse decision affirmed.

CASENO: 13-00081.a1

DATE: 02/20/2014

DATE: February 20, 2014

In Re:)
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-----) ISCR Case No. 13-00081
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Applicant for Security Clearance)
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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 July 1, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement), Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On November 27, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 Applicant was denied due process and whether the Judge’s decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guidelines H, J, and 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 is a 50-year-old employee of a Federal contractor. He has worked for his current employer since 1982 and has held a security clearance since 1985. When he applied to renew his clearance in the mid-2000s, he failed to respond to DOHA interrogatories, resulting in a denial of his clearance. Applicant has assumed responsibility for taking care of his elderly mother and, for a time, his father.

Applicant failed to file a Federal income tax return for 2003, stating in his security clearance application that this failure was due to laziness. He did not file any Federal or state tax returns until 2012. As of the close of the record, Applicant owed the IRS about \$16,445. He also owed \$2,970 to his state, but these tax debts were satisfied through a garnishment of his wages.

Applicant negotiated a repayment plan with the IRS in 2012. Under this plan, he is required to pay \$100 a month. He estimates that these payments, plus any tax refunds that might arise, will enable him to pay off his debts in four years. Applicant stated that he could afford to pay more but that he likes to have extra money available. He spends about \$50 a week on lottery tickets. He has not sought or received financial counseling.

Applicant enjoys an excellent reputation for the quality of his work performance. His supervisors believe him to be responsible and conscientious.

The Judge’s Analysis

The Judge concluded that Applicant had not mitigated the concerns arising from his tax liability. He stated that Applicant appears to have contacted the IRS only after his debt became a security concern. He cited to evidence that Applicant had ignored his obligation to file returns for many years and that Applicant is repaying his delinquent tax at a rate below his ability to pay. The Judge stated that Applicant “has placed a higher priority on buying lottery tickets than on paying his taxes.” Decision at 10. In the whole-person analysis, the Judge noted the high opinion in which

Applicant's duty performance is held. However, the Judge characterized Applicant's attitude toward his obligations as "passive," citing to his failure to have responded to interrogatories and his failure to have filed Federal and state tax returns.

Discussion

Applicant has raised an issue of due process. Specifically, he claims that his hearing was taking more time than originally anticipated, the Judge and Department Counsel conferring about notifying participants in the next case of the possible delay. Applicant stated that, as a consequence, he felt pressured and did not think through his testimony as thoroughly as he should have. Applicant contends that this haste resulted in his presenting a false picture of the priority that he attached to purchasing lottery tickets.

We have examined the totality of the record evidence. Applicant offered several documents, all of which were admitted into the record. In addition, the Judge left the record open to enable Applicant to submit further evidence, which he did. During the hearing, Applicant testified at length about all of his security-significant conduct. Neither the Judge nor Department Counsel attempted to curtail this testimony. Although the Judge did note that the upcoming hearing might be slightly delayed due to the length of Applicant's hearing, he did not state or intimate that Applicant should rest his case or hurry it up in the interest of time management. There is no support in the record for the proposition that Applicant was denied his right under the Directive to present evidence in his own behalf. *See* Directive ¶ 4.3.4. Although Applicant may regret comments about his purchase of lottery tickets, this testimony was voluntarily given and does not appear in any way to have been the result of undue pressure. Applicant was not denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 11-01470 at 2-3 (App. Bd. Mar. 5, 2012).

Applicant contends that the Judge extended too much weight to his testimony about his purchase of lottery tickets. We note that the Judge commented on this matter in his analysis. However, the Judge also relied in large measure on testimony provided by Applicant that (1) his debt to the IRS was twice the amount alleged in the SOR, (2) he had owed back taxes to the state that were satisfied through garnishment, and (3) he had failed to file tax returns for his Federal and state taxes for many years. The Judge also relied on evidence that Applicant had failed to respond to DOHA interrogatories during the adjudication of a prior clearance application. The Judge interpreted this evidence as demonstrating Applicant's indifference to fulfilling his responsibilities. This was not alleged in the SOR. However, the Judge stated that he would consider it for its relevance to the issues of mitigation, etc., which was appropriate. Tr. at 120. *See, e.g.*, ISCR Case No. 11-13664 at 5, n. 2 (App. Bd. Aug. 15, 2013).

Given the totality of the record evidence, we cannot say that the Judge extended undue weight to Applicant's lottery ticket purchases or, had that evidence not been presented, that he would have decided the case differently. Applicant's purchase of these tickets while owing a substantial debt to the IRS was a matter that was proper for the Judge to address. Applicant has not demonstrated that the Judge weighed this evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-09989 at 3 (App. Bd. Nov. 18, 2013).

The Judge examined the relevant data 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board