

KEYWORD: Guideline F

DIGEST: The Judge's conclusions are supported by the weight of the evidence. Adverse decision affirmed

CASENO: 13-00311.a1

DATE: 01/24/2014

DATE: January 24, 2014

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In Re: )  
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 ----- ) ISCR Case No. 13-00311  
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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**

Julia Szafraniec, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 28, 2013, 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 October 31, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White 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 erred in his application of the pertinent mitigating conditions and whether the Judge erred in his whole-person analysis. Consistent with the following, we affirm the Judge's decision.

### **The Judge's Findings of Fact**

Applicant has been offered a position by a Defense contractor, conditioned on receipt of a security clearance. His primary work experience has been in managing Government contracts and foreign military sales. Applicant has held a security clearance in the past, although the Defense Industrial Security Clearance Office denied him one in 2009, due to his financial problems.

Over the past several years Applicant has experienced significant periods of unemployment. The Judge found that, during the 134 months between June 2002 and July 2013, he had been employed for 54 months by five different companies, reportedly leaving each job voluntarily. He spent 21 months attempting, unsuccessfully, to start up a military equipment export company. The remaining 59 months Applicant was unemployed.

In 2005,<sup>1</sup> Applicant made over \$500,000 of speculative real estate investments in a blighted area of a distant city. He was not able to manage these properties adequately, nor the city provide anticipated urban renewal improvements. Applicant never received the rental income that he expected, and he stopped paying on his mortgage loans. He sued some of the developers who sold him the properties, receiving a default judgment. This judgment was not collectable, however, due to the precarious financial condition of the defendants. Applicant did not sue the mortgage lender. Two of these loans are alleged in the SOR. They total nearly \$300,000.

In 2007, Applicant bought residential property in another state, financing the purchase with a \$360,000 mortgage. He decided not to move, however, and stopped making mortgage payments. The property went into foreclosure, and Applicant provided no evidence of having resolved the resulting \$161,022 deficiency.

The SOR alleged an unpaid utility bill of \$469 and three delinquent medical debts, totaling nearly \$63,000. These medical bills accrued due to Applicant's having suffered a stroke during a period of unemployment when he was without health insurance. Applicant testified that he would pay these debts once he obtained employment, although he did not explain why he made no payments while working overseas from October 2010 to July 2012.

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<sup>1</sup>In the Analysis, the Judge summarized his findings about Applicant's financial circumstances. Our presentation of the Judge's findings is based in large part on this summary.

Applicant has not had financial counseling. He has an undergraduate degree in economics and some other education in contract administration. A March 2013 financial statement shows no net monthly income. Applicant lives with his parents-in-law, paying no rent. He has about \$30,000 in bank savings and \$59,000 in home equity. He claims to have no other debts and to be paying his present expenses and a credit card debt by depleting his savings and retirement accounts.

Applicant enjoys an excellent reputation for his character, trustworthiness, and duty performance. He testified that he had received certificates and awards from colleges and prior employers but did not provide copies of any.

### **The Judge's Analysis**

The Judge concluded that Applicant's financial circumstances raised Guideline F security concerns. In evaluating Applicant's case for mitigation, the Judge cited to evidence that Applicant "walked away from multiple unsound real estate investments in two different cities . . ." Decision at 10. The Judge stated that Applicant was unable or, when employed, unwilling to make payments toward his real estate debts or his medical bills. Although Applicant's investments were made near the peak of the real estate bubble, he actually stopped making his mortgage payments before a substantial market collapse had occurred. His only effort to pursue a legal recourse has been an uncollectible default judgment and he has no plan in effect to resolve his medical debts. Although the medical debts were beyond Applicant's control, the Judge concluded that Applicant had failed to demonstrate responsible action in regard to those debts. In addition, Applicant failed to demonstrate that any of his periods of unemployment were other than voluntary or that they caused the financial problems alleged in the SOR.

In the whole-person analysis, the Judge reiterated that Applicant had voluntarily entered into speculative real estate investments without sufficient knowledge or experience to succeed. Although Applicant has remained current on other obligations, the Judge stated that he "abandoned multiple properties to foreclosure, and remains liable for more than \$500,000 in debt." *Id.* at 11. He stated that Applicant had "taken no effective action in the past seven years to resolve the resulting indebtedness despite being denied a security clearance due to financial considerations in 2009." *Id.* The Judge concluded that Applicant's conduct in regard to his voluntarily assumed financial obligations did not evidence trustworthiness.

### **Discussion**

Applicant challenges the Judge's treatment of several of the Guideline F mitigating conditions. He argues, *inter alia*, that he has demonstrated a willingness to resolve his debts and that his real estate difficulties, as well as his medical problems, were beyond his control. He argues that the nature of his debts makes them unlikely to recur and that they do not cast doubt upon his trustworthiness or good judgment. He contends that evidence of his attempts at legal recourse shows that he has made a good-faith effort to resolve his debts. He argues that he has a reasonable basis for disputing the real estate debts.

We have considered Applicant's arguments in light of the entirety of the record evidence. We find no reason to disturb the Judge's analysis. In a Guideline F case, a Judge must evaluate an applicant's financial condition for what it may reveal about the applicant's self-control, judgment, and other pertinent qualities. *See, e.g.*, ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). The Judge appears to have done so in this case, concluding that Applicant has failed to meet his burden of persuasion that: the debts in the SOR are not legitimately his; they do not impugn his judgment; they are being resolved; or they were caused in large measure by circumstances beyond Applicant's control. In effect, Applicant is arguing for an alternative interpretation of the record evidence, which is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 10-06089 at 3 (App. Bd. Sep. 11, 2013). The Judge's treatment of the mitigating conditions does not run contrary to the weight of the record evidence. *See, e.g.*, ISCR Case No. 10-00824 at 4 (App. Bd. Aug. 6, 2012). Moreover, the Judge's whole person analysis complies with the requirements of the Directive in that he considered the totality of Applicant's conduct in reaching his decision. *See, e.g.*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012).

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