KEYWORD: Guideline F

DIGEST: The Directive presumes a nexus between admitted or proven conduct under any of the Guideline s and an applicant's eligibility for a clearance. Adverse decision affirmed.

CASENO: 14-02806.a1

DATE: 09/09/2015

DATE: September 9, 2015

In Re:	)	
--------	)	ISCR Case No. 14-02806
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Cheryl Van Ackeren, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 3, 2014, 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 June 17, 2015, 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 Applicant's circumstances raised security concerns; whether the Judge failed to consider all of the evidence; whether the Judge's whole-person analysis was erroneous; and 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

Applicant is an employee for a Defense contractor. He has worked for this employer since 2007. Before that, he worked for a state law enforcement agency and held some part-time jobs. A high school graduate, he earned two community college degrees while serving in the military. He was on active duty from 1987 until 1992 and then in the Reserves until 2012, retiring as an E-8. He held a security clearance while in the military.

Applicant has several delinquent debts, including two home equity loans that were charged-off and placed in collection. He has a purchase money first mortgage on his house, which was delinquent at the time of the hearing, and yet another home equity loan upon which he is making payments. He also has delinquent debts for credit cards and medical expenses. Applicant and his wife have a combined income of nearly $80,000 annually. He provided no budget or financial statement, despite being given the opportunity to do so. He has undergone no financial counseling, has no savings, and claims that his income is not sufficient to pay his debts. Applicant testified that his wife suffered an automobile injury in 2002, resulting in her missing several months of work while she recovered. The couple had financial problems before the injury, however, and Applicant drew no connection between it and their debt problems.

Applicant's supervisor attested to the high quality of Applicant's work performance. Applicant also demonstrated outstanding duty performance in the military. After the hearing he submitted evidence that he had just entered into a fee agreement with an attorney to file for Chapter 13 bankruptcy. Applicant showed that he had completed the mandatory credit counseling course, though without preparing a debt repayment plan. No other proof of progress on the bankruptcy was submitted.

The Judges' Analysis

The Judge resolved four of the ten allegations in Applicant's favor, finding that some were duplicates of others. He resolved the remainder adversely to Applicant. He stated that Applicant's debts are ongoing and that there are no indications that the underlying circumstances have changed. The Judge concluded that Applicant's debts were not caused by circumstances outside his control and that he was fully employed during the time they became delinquent. The Judge noted that Applicant had recently received bankruptcy counseling. He stated, however, that Applicant had not

demonstrated progress toward resolving his debts or otherwise getting control over his finances. The Judge acknowledged that Applicant had paid one debt and that he had entered into an agreement with a bankruptcy attorney, which he characterized as positive. In the whole-person analysis, the Judge stated that, if anything, Applicant's financial condition is deteriorating.

Discussion

Applicant challenges the Judge's conclusion that his debt problems raise security concerns. When an applicant denies an allegation in the SOR, the Government must produce evidence in support of the allegation. *See* Directive ¶ E3.1.14. The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 10-00925 at 3 (App. Bd. Jun. 26, 2012). In this case, Applicant's response to the SOR admitted all but one of the allegations that the Judge found against him. At the hearing, he acknowledged that he owed all of the debts that formed the basis of the Judge's adverse decision. In addition, the Government presented evidence by way of Applicant's answers to questions on his security clearance application, a written affidavit by Applicant, and two credit reports. Credit reports in and of themselves are often sufficient to meet the Government's burden of production. *Id*. Taken together, Applicant's admissions and the evidence produced by the Government constitute substantial evidence of security concerns under Guideline F, in that they impugn his judgment and reliability. *See* Directive, Enclosure 2 ¶ 18. *See* ISCR Case No. 11-00541 at 4 (App. Bd. Dec. 5, 2012) for the proposition that the Government's burden is to produce substantial evidence. Applicant has not rebutted the presumption that there is a nexus between his financial problems and his eligibility for a clearance.

Applicant contends that the Judge's decision contains contradictory statements. In making this argument, he includes matters not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant notes the Judge's comments that he has not made any progress on paying his debts and that he has not had financial counseling. He contrasts these statements with others in which the Judge acknowledged Applicant's steps toward filing for bankruptcy, a process that included debt counseling. We have given this argument due consideration. However, we conclude that the Judge did not make contradictory statements. Evidence that Applicant has hired a bankruptcy attorney does not contradict the Judge's findings and conclusions to the effect that Applicant has had substantial debt for many years, which remained unpaid as of the close of the record. In addition, the Judge noted Applicant's bankruptcy debt counseling, but implicitly compared it with the kind of detailed counseling that would likely have been available to Applicant while in the military, or through on-line services or other computer programs. This was not unreasonable, given the evidence that was before the Judge. It is an applicant's job to present evidence sufficient to mitigate the concerns raised in his or her case, and the applicant bears the burden of persuasion that he or she should be granted a clearance. Directive

¶ E3.1.15. Applicant's argument is not sufficient to undermine the Judge's overall conclusion that he had presented little by way of debt resolution.[1]

Applicant's argument on appeal is not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-09118 at 3 (App. Bd. Mar. 25, 2015). Applicant's challenge to the Judge's analysis of the mitigating conditions amounts, in effect, to a disagreement with his weighing of the evidence. That is not enough to undermine the Judge's conclusions. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014). Moreover, we conclude that the Judge's whole-person analysis satisfies the requirements of the Directive in that the Judge evaluated Applicant's security-significant circumstances in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 12-03077 at 2-3 (App. Bd. May 13, 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 Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

[1]Applicant cites to the Judge's colloquy with him toward the end of the hearing, in which the Judge discussed bankruptcy as a possible course of action. *See* Tr. at 103-107. In probable response to a prior comment by Applicant, the Judge explained, in some detail, that Chapter 13 bankruptcy does not necessarily preclude an applicant from getting a clearance and that, in and of itself, it does not reflect poorly on his character. Applicant states in his Appeal Brief that the Judge suggested bankruptcy as a possible way to mitigate his security concerns. He states that, in response to this colloquy, he submitted evidence that "he had entered into Chapter 13 bankruptcy[.]" Appeal Brief at 4. Applicant has included documents that post date the close of the record or, in some instances, the Decision itself. A Judge has no authority to promise an applicant a clearance or to advise an applicant on the quantum of evidence that would mitigate the concerns in his or her case. *See, e.g.*, ISCR Case No. 14-00156 at 4 (App. Bd. Oct. 16, 2014); ISCR Case No. 14-02950 at 4, note 5 (App. Bd. May 14, 2015). Reading the Judge's comments as a whole, we do not find in them such promises or advice. However, we think that it is possible that the Judge's comments raised in Applicant a hope, perhaps an unreasonable one under the circumstances, that filing for bankruptcy would be sufficient to mitigate the concerns raised in the SOR. In any event, we find no basis to conclude that a reasonable person would interpret the Judge's comments to mean that Applicant's lengthy history of delinquent debt could be fully mitigated simply by presenting a representation agreement with a bankruptcy attorney and a bankruptcy counseling certificate, which is what he had submitted by the close of the record.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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