

KEYWORD: Financial Considerations

DIGEST: The Judge’s whole-person analysis complies with the requirements of the Directive. Even applicant’s with good prior security records can encounter circumstances that may compromise their judgment. Moreover, the Government is not estopped from denying a clearance even when there were prior favorable adjudications. Adverse decision affirmed.

CASE NO: 14-02995.a1

DATE: 04/07/2016

DATE: April 7, 2016

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In Re:)	
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-----)	ISCR Case No. 14-02995
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan Shachter, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 16, 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 December 31, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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, we affirm.

The Judge's Findings of Fact

Applicant has been employed by Defense contractors from 1995 to the present. He started working for his current employer in 2013. The SOR alleges nine delinquent debts, two of which the Judge found to be duplicates of others. One of them, a judgment, was satisfied through garnishment. Applicant presented evidence that he had satisfied a traffic ticket that was alleged in the SOR and has a payment plan in effect for another debt. Otherwise, his evidence concerns the resolution of debts not alleged in the SOR. Applicant contends that his financial problems resulted from his wife's unemployment following childbirth and again when an employment contract ended. Applicant's wife is currently employed, making about \$87,000 a year, while Applicant makes about \$137,000 a year. Applicant presented no evidence of financial counseling or of a budget. Neither did he provide character or work references.

The Judge's Analysis

The Judge found that Applicant's financial problems were recent. He also stated that, despite some circumstances beyond Applicant's control, he had not been responsible in addressing his debts. He noted that the one SOR debt that had been paid before the SOR was done so by garnishment rather than through Applicant's own initiative. He stated that Applicant had presented evidence of no contact with his creditors and documented no efforts to resolve his debts before receiving the SOR. He stated that Applicant's "flurry of post-hearing activity, most of which was aimed at debts not alleged in the SOR," did not evidence a good-faith effort to resolve his financial problems. Directive at 4-5. In view of his finding that Applicant had presented no evidence of financial counseling or a budget, the Judge stated that there was no reason to conclude that Applicant's problems were being resolved.

Discussion

Applicant contends that the Judge interpreted the Directive in a narrow way. He cites to evidence that he believes supports his effort to gain a clearance, tying this evidence to the various criteria for a whole-person analysis set forth in Enclosure 2 ¶ 2(a). Applicant's argument consists, in essence, of a disagreement with the Judge's weighing of the evidence. This argument 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. 14-06440 at 4 (App. Bd. Jan. 8, 2016). We conclude that the whole person analysis complies with the requirements of Directive ¶ 6.3 and Enclosure 2 ¶ 2(a), in that the Judge considered the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015). Applicant states that he has never had a security incident during his career and that he has received favorable clearance adjudications in the past. However, even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9,

2015); *Adams v. Laird*, 420 F. 2d 230, 238-239 (D. C. Cir. 1969), *cert. denied* 397 U.S. 1039 (1970). Moreover, prior decisions to grant or retain a clearance do not undermine the legal sufficiency of a Judge's subsequent adverse decision. The Government is not estopped from making an adverse clearance decision when there were prior favorable adjudications. *See, e.g.*, ISCR Case No. 12-00609 at 2, n. 2 (App. Bd. Apr. 4, 2014).

Applicant makes an argument regarding Guideline F paragraphs (e) and (i). We conclude that this is a reference to the Judge's formal findings which pertain to SOR subparagraphs, not the Guideline F paragraphs.

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