

KEYWORD: Guideline F

DIGEST: Applicant has the burden of providing evidence of mitigation, explanation, extenuation or rebuttal of the security concerns raised. Adverse decision affirmed.

CASENO: 14-03030,a1

DATE: 09/02/2015

DATE: September 2, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-03030
)	
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 September 15, 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 decision on the written record. On June 17 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mary E. Henry 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 were based upon substantial record evidence and whether the Judge’s adverse decision as arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant works for a Defense contractor. He has held a clearance for 21 years. The record contains no evidence of any security violations or other mishandling of proprietary information. Applicant earned an advanced degree in 2011. He is married, with two sons and a stepson.

Applicant was discharged in Chapter 7 bankruptcy in 2000, which removed all of his then existing debts. His SOR alleges several additional delinquent debts, for such things as a second mortgage on a home that went into foreclosure, a Federal tax lien, student loans, a repossessed vehicle, etc. The foreclosure resulted from Applicant and his wife having entered into a mortgage agreement that they did not fully understand, the monthly payments eventually becoming too high. The Judge noted that Applicant did not provide any information about the status of this debt or about the tax lien. She also noted his statement that some of his debts no longer appeared in his credit reports.

Although the record contains evidence of a 2013 financial statement submitted as part of Applicant’s student loan rehabilitation, the Judge stated that there is no more recent statement. She noted that Applicant had said that his net monthly income is \$9,000, with more than \$3,000 left over after expenses.

The Judge’s Analysis

The Judge resolved some of Applicant’s debts in his favor, including the delinquent student loans and some smaller ones. She resolved the rest against him, including the Federal tax lien and the second mortgage. She cited to a paucity of evidence about the extent of Applicant’s Federal tax debt. She also noted that Applicant has chosen not to pay the remaining amount owed on the vehicle repossession, nor has he taken steps to resolve debts that have fallen off his credit report.

In the whole-person analysis, she stated that Applicant’s track record was not sufficient to demonstrate that he had mitigated the concerns in his case. She also observed that, after having been given a fresh start by means of his bankruptcy action, he failed to manage his finances.

Discussion

Applicant discusses some of the Judge's findings, in an attempt to clarify them or to provide context. Among other things, he states that there is more recent information concerning his present ability to pay his debts, which, he argues, undercut some of the Judge's findings. He also contends that his response to the SOR was poorly worded in some places, especially regarding the repossessed vehicle.

In a DOHA proceeding, it is an applicant's duty to mitigate, rebut, or extenuate the concerns raised by his or her circumstances, in this case financial delinquencies. Directive ¶ E3.1.15. Moreover, in the File of Relevant Material, Department Counsel placed Applicant on notice of evidentiary gaps that he could address in meeting his burden of persuasion. Nevertheless, we note the Judge's findings and comments that the record did not contain sufficient information about Applicant's finances to permit a favorable overall conclusion. These findings and conclusions are sustainable. If Applicant had possessed more recent evidence concerning his finances, it was his duty to have provided it during the pendency of the record. The Judge's material findings were based upon substantial record evidence or constitute reasonable inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Even if the findings contained errors or misinterpretations, correcting them would not likely produce a different result, given evidence that Applicant amassed substantial delinquent debt following a bankruptcy discharge and that the debt is largely ongoing.

Applicant's brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant cites to favorable evidence, such as his installment agreement with the IRS. His arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they sufficient 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. 14-00251 at 4 (App. Bd. Oct. 10, 2014).

Applicant argues that it was inconsistent for the Judge to have found that he had an installment agreement with the IRS yet hold against him regarding the tax debt allegation. However, even if a debt is the subject of a settlement agreement, a Judge may still consider the underlying circumstances of the debt, or a paucity of such evidence, in evaluating whether an applicant has met his or her burden of persuasion. *See, e.g.*, ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 2014).

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: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board