

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 14-00279.a1

DATE: 01/23/2015

DATE: January 23, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-00279
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 24, 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 October 31, 2014, 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 held a security clearance for over 17 years. She has been variously employed by the Government and by Government contractors. She has been self-employed as a Defense contractor since the incorporation of her company in late 2009.

Applicant’s SOR alleges three delinquent debts, totaling nearly \$59,000, all with the same bank. She paid two of them in June 2014 and the third the following July. She completed eight on-line money management courses. She and her husband have a positive monthly cash flow of over \$13,000.

From October 2009 until May 2011, Applicant worked on a Government contract in support of U.S. interests overseas. She was paid \$1,000 a day, totaling between \$546,000 and \$608,000. U.S. officials rated her job performance highly. She previously worked for the U.S. military in an overseas location and, before that, worked for a private company, also overseas.

In 2009 and 2010, Applicant’s son experienced financial problems due to the recession. She provided him with about \$218,000 in financial assistance. She paid off 15 of his debts, some of which were connected with his business and others were personal. One of the SOR debts is for a \$30,000 cash advance on a line of credit that she obtained in 2006 and which she used to assist her son. Although the son states that these payments were a loan, Applicant testified that they were gifts. Applicant owed an additional \$39,440 in Federal taxes for tax year 2010.

When Applicant’s contract expired in 2011, she was not able to obtain employment in her career field. She was unemployed from May 2011 until February 2013, when she found work with a Government contractor. However, that job lasted only six months. Applicant borrowed money from her sister and charged day-to-day expenses on her credit cards. The credit card debts became delinquent. They are the debts alleged in the SOR.

Applicant attributed her financial problems to her lack of understanding of the economic recession in 2008. She also contended that her unemployment affected her debts as well. The Judge found these explanations to be less than credible. He stated that the recession was a central theme of the 2008 presidential election, making it less likely that she would have been unaware of it. He also noted that Applicant’s unemployment was foreseeable, insofar as her contract had had

a fixed termination date. He found that she had made enough money to enable her to save for that event.

Applicant claimed that she had maintained regular contact with the SOR creditor; however, she did not corroborate this claim. Although these debts were turned over to collection agents, she did not contact them until February 2013. When she realized that her clearance was in jeopardy, she took sufficient income from her company to pay off her debts. Applicant's sister and husband consider her to be honest and trustworthy.

The Judge's Analysis

The Judge concluded that Applicant had not mitigated the security concerns arising from her delinquent debts. He stated that her problems are recent. He also concluded that her problems were affected by her payments to her son and her failure to save, despite having earned up to \$608,000 between October 2009 and May 2011. The Judge stated that it was not clear where Applicant's money had gone. He also cited to evidence that she had owed \$39,000 for taxes for 2010. The Judge stated that payments made so close to the hearing did not exhibit a good-faith effort to pay her debts, given that she had known about them for a long time. He stated that, laudable as it may be, Applicant's assistance to her son was not a legal obligation as were her own debts. He characterized this assistance as extravagant. He also stated that, while Applicant intends to avoid financial problems in the future, she has a poor track record of doing so. He stated that, without a clearer view of how Applicant's company will perform in the future, he could not conclude that Applicant's financial problems are behind her.

Discussion

Applicant cites to record evidence, including her having paid her SOR debts, her having held a clearance for many years, and her lack of financial problems other than those underlying SOR. A Judge is presumed to have considered all of the evidence in the record, and Applicant's brief is not sufficient to rebut that presumption. Neither is it 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. 10-06824 at 2 (App. Bd. Apr. 9, 2012). The Judge made findings about the evidence that Applicant has cited. However, his conclusion about the timing of Applicant's debt resolution is sustainable and supports his ultimate decision. *See, e.g.*, ISCR Case No. 14-00700 at 2 (App. Bd. Sep. 24, 2014) ("Timing of . . . debt payments is relevant in evaluating an applicant's case for mitigation.")

Applicant has cited to other Hearing Office cases that, she contends, support her case for a security clearance. We have given these cases due consideration as persuasive authority, but they are not binding on us or on other Hearing Office Judges. *See, e.g.*, ISCR Case No. 12-04508 at 3 (App. Bd. Aug. 21, 2014). In any event, these cases do not provide a reason to conclude that the Judge's decision was erroneous.

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

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

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