

KEYWORD: Guideline F

DIGEST: The Judge’s findings of security concern are sustainable. Applicant challenges the Judge’s treatment of her gambling. Given the Judge’s conclusion that it did not cause her financial problems, she contends that it should have resolved favorably. Guideline F addresses financial circumstances that cast doubt upon an applicant’s judgment, self control, etc. The Judge reasonably concluded that her expenditures of up to \$500 a casino trip while incurring debts that she could not pay impugned her good judgment. A Judge has no obligation to discuss every piece of evidence, which would be a practical impossibility. She has not rebutted the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASENO: 14-01031.a1

DATE: 12/11/2015

DATE: December 11, 2015

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In Re:)	
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)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Joseph R. Price, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 30, 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 initially requested a decision on the written record but subsequently requested a hearing. Tr. at 10. On August 27, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 contained errors 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 has worked at her current job since 2012. She has held a clearance for 24 years. Since 2008, Applicant has incurred \$215,000 in delinquent debt, \$53,000 of which is for delinquent mortgage payments, \$98,000 is for credit cards, and the remainder for delinquent Federal income taxes. Although her delinquencies began in 2008, she had been vulnerable for such problems even before then. She and her husband were entrepreneurs who became financially overextended on business ventures. Because of her husband’s bad credit, the cards were in Applicant’s name.

In 2008 Applicant’s husband became unable to work due to an injury. As a consequence, the couple relied on credit cards for ordinary expenses. After receiving a disability settlement, Applicant’s husband separated from her, keeping the money. Soon after, Applicant’s mother’s health deteriorated, so Applicant had to hire a caregiver for the hours Applicant was away at work. She withdrew funds from her 401(k) plan which, along with insufficient withholding from her income, led to tax bills that she could not afford to pay.

In 2010, she retained a credit counselor, with whose help she has satisfied four SOR debts totaling over \$27,000. She was also able to secure a modification of her mortgage loan and is now current on this obligation.

Applicant’s tax debts from 2010 and 2011 totalled nearly \$28,000. She began making \$500 a month payments in 2011, but they were sporadic. By 2013 Applicant had made little progress on resolving her tax delinquencies. She has negotiated a plan whereby she will pay the IRS \$1,700 a month, scheduled to begin after the close of the record. She currently owes between \$70,000 and \$80,000 in back taxes for several years.

Between 2007 and 2014, Applicant regularly visited casinos every couple of months, taking with her between \$400 and \$500. Casino records indicate that she spent between \$10,000 and \$17,000 annually. Although Applicant did not dispute these sums, she contended that the money came from her traveling companions who would transfer their funds to Applicant's "comp cards" and then use those cards to gamble. This enabled Applicant to obtain various benefits such as spa treatments, complimentary hotel rooms, free meals, and free shows.

Applicant earns about \$6,000 a month after taxes. She pays \$600 each month for payment on a car. She also has an \$8,000 student loan that is in forbearance. She also pays \$1,200 a month for home care for her mother.

The Judge's Analysis

The Judge resolved some of the SOR debts in Applicant's favor. However, he arrived at the opposite conclusion for seven of the allegations. The debts that the Judge resolved adversely to Applicant were for credit cards and Federal tax delinquencies. The Judge also made adverse findings for an allegation pertaining to her having made over \$10,000 in casino chip purchases despite her financial problems. On this last point, the Judge stated that the evidence does not show that Applicant's gambling caused her financial problems. However, he concluded that multiple trips to casinos, where she spent up to \$500 per trip while at the same time incurring significant credit card delinquencies, demonstrates irresponsibility and bad judgment. Concerning the remaining debts, the Judge stated that, even if she began making debt payments as she promised, her expenses would exceed her monthly income.

In the whole-person analysis, the Judge cited to evidence that Applicant had held a clearance for nearly 25 years and that circumstances beyond her control led to her financial problems. However, given her frequenting of casinos at a time in which she had significant debts that she was not able to pay impugned her judgment.

Discussion

Applicant's brief cites to evidence not contained in the record. We cannot consider new evidence on appeal. Directive, Enclosure 2 ¶ E3.1.29.¹

Applicant contends that the Judge's findings of fact contained errors. For example, she states that it was her husband who was the entrepreneur, not she along with him. She also states that the Judge erred in finding that her monthly net income is \$6,000, maintaining instead that it is \$9,000, extrapolating from her recent tax return. We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion

¹Applicant states that she failed to call a character witness who was available to testify, citing to her *pro se* status. To the extent that she is raising an issue of due process, there is no reason to believe that Applicant's decision to represent herself at the hearing was other than knowing and intelligent.

in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

In this case, we find no reason to disturb the Judge’s findings. Applicant testified that both she and her husband were involved in establishing businesses.² She also testified that her monthly income was “[a]bout \$6,000 after taxes.” Tr. at 49. Considering the record evidence as a whole, the Judge’s material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant challenges the Judge’s treatment of Applicant’s casino gambling. Given the Judge’s conclusion that it probably did not actually cause her financial problems, Applicant contends that he should have resolved the allegation in her favor.

Guideline F addresses, *inter alia*, financial circumstances that cast doubt upon an applicant’s judgment, self control, and other characteristics essential to protecting national security information. *See, e.g.*, ISCR Case No. 14-01479 at 2 (App. Bd. Sep. 2, 2015). In this case, the Judge concluded that Applicant having spent up to \$500 a trip on visits to casinos at a time in which she was incurring credit card debts that she could not pay impugned her good judgment. This was reasonable, given the record that was before him.³ We find no error in the Judge’s treatment of this evidence.

Applicant challenges the Judge’s application of the whole-person concept. She cites to her many years of holding a clearance without incident or concern, her favorable character references, and evidence to the effect that circumstances outside her control affected her financial condition.

The Judge discussed much of the evidence that Applicant has cited, and he specifically concluded that Applicant’s problems arose from circumstances that were not within her control. Decision at 6. A Judge has no obligation to discuss every piece of evidence, which would be a practical impossibility. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Moreover, the Judge’s whole person analysis complies with the requirements of Directive, Enclosure 2 ¶ 2(a), in that he considered the totality of Applicant’s conduct in reaching his decision. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

² “[W]hile I was married we were doing businesses and he was trying to start a business and my ex-husband couldn’t get any credit in his name so it was all in my name.” Tr. at 24. “We were trying to establish a business . . . we were trying to figure out what we could do or what he could do.” Tr. at 34.

³ We also note the Judge’s findings that she was spending up to \$500 at casinos at a time in which she was not able to make monthly payments of an equivalent amount to resolve her delinquent Federal taxes. *See* Decision at 3-4.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The Judge's treatment of the mitigating conditions is consistent with the record that was before him. 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