

KEYWORD: Guideline F

DIGEST: The Judge did not err in his conclusion that Applicant’s circumstances raised security concerns. The Judge’s material findings are supported by substantial evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence.

CASE NO: 14-01761.a1

DATE: 08/03/2015

DATE: August 3, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-01761
)	
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 July 2, 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 May 19, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 decision.

The Judge's Findings of Fact

Applicant left the military in 2012 and began working for a Federal contractor. His SOR alleges six delinquent debts, which he attributes to his separation and divorce from his wife. He has not used a credit card in five years and his current finances are in order. Applicant has made some payments to his creditors, having promised to pay some of his debts after he resolves others. The Judge found that his payment history to one of them has been inconsistent, in view of evidence that he made one payment of \$496 and several more of \$50. Applicant owes a balance of nearly \$6,200 on it as of April 2015.

One of Applicant's debts is for a mortgage loan for over \$150,000. After he separated from his wife, Applicant found it difficult to make his mortgage payments. He missed payments and made partial ones for about a year before contacting the lending company. Applicant claimed that the system was designed to ensure that the buyer failed. He attempted to resolve the debt through a deed of foreclosure but was not successful. He moved out of the house in 2012, stating in his answer to the SOR that he rented the house and has made payments every month. "It is unknown if he still resides in the house." Decision at 3.

The mortgage lender entered into an agreement with Federal banking regulators as a result of an enforcement action concerning deficient servicing and foreclosure processes. Applicant received a check for \$1,000 as part of this agreement. Applicant has settled and paid one of the debts, providing documents in corroboration. The Judge found this debt to be resolved. Applicant's annual income is \$106,080. He contributes 6% of his income to a retirement account, his employer contributing another 4%. He has a savings account with a balance of \$1,200 and an emergency cash fund of \$500.

The Judge's Analysis

The Judge noted that Applicant's divorce was a circumstance outside his control that affected his financial condition. She concluded, however, that he had not acted responsibly in regard to his debts. Concerning the largest of these, the mortgage, the Judge stated that Applicant had not provided sufficient evidence for her to make a determination about its status. She stated "He stopped making his mortgage payments and moved out of the house. He then moved back in as a tenant." Decision at 6. The Judge also stated that Applicant had provided no evidence of his actions to pay his remaining delinquent debts. In the whole-person analysis, the Judge reiterated that Applicant had failed to provide sufficient evidence of debt resolution.

Discussion

Applicant argues that the Judge erred in concluding that his circumstances raised disqualifying condition 19(a),¹ in that he believes that he has shown himself to be willing and able to satisfy his debts. The Government presented evidence that Applicant has several debts that have been delinquent for a substantial length of time, raising a concern under Guideline F. Such a concern is not conclusive, however, nor is it a determination that Applicant is necessarily a person of bad character. Rather, it places on Applicant the burden of explaining, refuting, or mitigating the issues raised by his financial history. *See* Directive ¶ E3.1.15. In this case, we find no error in the Judge’s conclusion that Applicant’s debts raise a reasonable concern that he is unable to resolve them, thereby suggesting poor self control or a lack of judgment. *See* Directive, Enclosure 2 ¶ 18. Furthermore, the Judge’s conclusion that Applicant’s debts raise security concerns is sustainable under 19(c),² as she also found, or under the general language of ¶ 18. Therefore, even if there had been an error, it would have been harmless.

Applicant contends that the Judge erred in some of her findings of fact. He argues that the Judge erred in finding that he had moved back into his house as a tenant after vacating it. He also contends that his payment history to one of the debts was not inconsistent. 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 in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1.

Applicant argues that he did not move back into the house as a tenant. Rather, he rented the house out to others. The challenged finding is based on Applicant’s answer to the SOR, and it is not an unreasonable interpretation of the answer, read in and of itself. However, even if the Judge erred in her finding, it did not likely affect her overall decision, which focused primarily on the lack of evidence of debt resolution. Otherwise, the Judge’s findings are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012). Applicant has not cited to a harmful error in the Judge’s findings.

Applicant cites to his evidence in mitigation. However, his argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-03223 at 2 (App. Bd. Apr. 17, 2015). Applicant’s argument consists basically of an alternative interpretation of the record, which 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. 14-02950 at 4 (App. Bd. May 14, 2015).

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

¹Directive, Enclosure 2 ¶ 19(a): “inability or unwillingness to satisfy debts[.]”

²Directive, Enclosure 2 ¶ 19(c): “a history of not meeting financial obligations[.]”

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