

KEYWORD: Guideline F; Guideline E

DIGEST: The Board need not agree with a Judge’s decision to find it sustainable.. Adverse decision affirmed.

CASENO: 14-02138.a1

DATE: 02/11/2016

DATE: February 11, 2016

In Re:	)	
	)	
-----	)	ISCR Case No. 14-02138
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 12, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for

that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 30, 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 issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant has several delinquent debts for student loans and phone services. He attributes his debts to a six-month period of unemployment and to medical bills due to an accident, although he did not specify the date upon which the accident occurred. He contends that he has paid three of the alleged debts and is making payments on another. Applicant earns about \$4,000 after taxes and has an equal amount in savings. He has between \$800 and \$1,200 in discretionary income.

### **The Judge’s Analysis**

The Judge noted Applicant’s contention that some of his debts were no longer mentioned on his credit report. However, the Judge stated that this fact alone does not show that the debt had been actually satisfied. He also noted an absence of corroborating evidence for Applicant’s contention that he was making payments on one of the debts. The Judge concluded that Applicant’s presentation was not sufficient to meet his burden of persuasion as to mitigation.

### **Discussion**

Applicant cites to evidence of his job termination that resulted in a period of unemployment, to his hearing testimony, and to evidence regarding the circumstances underlying his debts. He draws our attention to a Fact Finding Report (Applicant Exhibit B), in which his state’s Board of Labor determined that his job termination was not misconduct such as to deny him eligibility for unemployment compensation. He states that the Judge did not give this matter proper weight in evaluating the effect of his unemployment on his financial condition.

In fact, the Judge cleared Applicant on an allegation concerning his job termination, and he made findings about Applicant’s unemployment. However, he also found that Applicant had incurred his debts before he lost his job. These findings are consistent with the Judge’s overall adverse decision. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015).

Applicant cites to a Hearing Office decision which he believes supports his case for a clearance. Each case must be decided upon its own merits, and Hearing Office decisions are not

binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. We need not agree with a Judge’s decision to find it sustainable. *See, e.g.*, ISCR Case No. 10-03301 at 2 (App. Bd. Jun. 7, 2012). “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