

KEYWORD: Guideline F

DIGEST: Applicant did not rebut the presumption that the Judge considered all of the evidence. The Judge’s whole-person analysis complies with the requirements of the Directive in that she evaluated the case in light of the totality of the evidence. Adverse decision affirmed.

CASE NO: 14-02605.a1

DATE: 06/16/2016

DATE: June 16, 2016

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In Re:)	
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-----)	ISCR Case No. 14-02605
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Terrence E. Coles, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 22, 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). On March 31, 2016, after conducting a hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 erred in her application of the mitigating conditions and whether the Judge erred in her whole-person analysis. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served in the military, retiring in 1998 in the grade of E-7. After that he worked as a civil service employee, and then later he began working for a contractor. He has held a clearance since he was on active duty.

Applicant has several delinquent debts. His debt problems arose from a medical emergency involving a pet, which necessitated surgery. Applicant charged a significant amount of money on his credit cards. Another circumstance affecting his debts is the fact that his girlfriend handles the finances.

The Judge found that Applicant was not generally aware of the couple's financial condition, even after receiving the SOR. The girlfriend has been late making payments on an auto loan approximately six times. At the hearing, Applicant was not aware that this loan was past due, and he did not know the interest rate on the vehicle. After receiving the SOR, Applicant contacted his creditors and made payment arrangements, though he relied on his girlfriend to make the payments. Applicant has resolved one of the SOR debts.

The Judge concluded that one of the debts alleged in the SOR is a duplicate of another. For the remaining three, however, she found that they had not been resolved. One of these three had been reduced to judgment. Applicant earns between \$65,000 and \$70,000 a years. His girlfriend also works, but the record contains no evidence of her salary. Applicant stated it is financially difficult for them each month.¹ Although Applicant stated that they are not behind on income taxes, he could not identify the tax professional who assisted them in filing. Applicant does not know whether his girlfriend is behind on any of her personal debts.

The Judge's Analysis

The Judge concluded that Applicant did not show responsible action in regard to his creditors after his finances were impaired by his pet's unexpected surgeries. He presented no evidence of anything he did to ensure that his girlfriend paid their debts. He claimed not to recall the substance of his clearance interview, though he admitted that his debts were likely discussed. Two of the debts alleged in the SOR had been reduced to judgment. Applicant resolved one of them and is making payment efforts on the other. However, the Judge concluded that payments in response to court

¹Applicant's brief asserts that there is nothing in the record that would support this finding. Appeal Brief at 7. *See, however,* the following colloquy between Department Counsel and Applicant: "[Department Counsel]: And you say you don't recall a time where [girlfriend] came to you and said that you weren't able to cover the monthly bills, or the credit card bills, or anything like that? [Applicant]: Sir, it's been tough every month. No, I don't recall any particular month that she came to me and said that. However, it's a fact of our lives that it's tough every month." Tr. at 65-66.

orders were entitled to less weight than voluntary efforts to resolve debts. The Judge characterized Applicant's approach to his finances as "hands-off," despite his girlfriend's mismanagement of their finances. Decision at 8. She concluded that his lack of knowledge concerning the terms of the vehicle loan indicate that he is not fully responsible for his finances.²

In the whole-person analysis, the Judge credited Applicant with good work performance. However, she concluded that his handling of his personal finances is not consistent with the good judgment of someone who has held a clearance for over 30 years. Despite his and his girlfriend's financial struggles, Applicant was not able to provide details about their expenses or the circumstances that affect their finances.

Discussion

Applicant asserts that he was financially sound until 2010, when his pet was injured. He cites to evidence of debt payment, and he argues that the Judge erred in attributing his financial problems to his lack of awareness. He also cites to evidence that he has held a clearance for many years without incident or concern.

The Judge discussed much of the evidence that Applicant has cited and applied some of it toward mitigation. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). We conclude that the Judge did not err in finding that Applicant was generally unaware of his financial problems or in the manner in which she evaluated this evidence. A clearance decision is a determination regarding an applicant's judgment and reliability, and an applicant who lacks basic information about his security-significant circumstances may be deficient in those qualities. *See* Directive, Enclosure 2 ¶ 18, for a statement of the concern regarding financial problems.³ We conclude that the Judge's whole-person analysis complies with the requirement of the Directive, in that she considered the totality of the record evidence in making her decision. *See, e.g.*, ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016).

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."

²"[I]t is difficult to find that he is fully financially responsible when he does not know the interest rate on a truck loan for which he is contractually liable for repayment at \$716 per month." Decision at 8.

³"Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board