

KEYWORD: Guideline F

DIGEST: No authority for a conditional or contingent clearance. Favorable decision affirmed.

CASENO: 08-07540.a1

DATE: 01/08/2010

DATE: January 8, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-07540
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 9, 2009, DOHA 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 5, 2009, after the hearing, Administrative Judge Mark Harvey

granted Applicant's request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge's conclusion that Applicant had mitigated the security concerns in his case was erroneous and whether the Judge attempted impermissibly to grant a contingent security clearance. Consistent with the discussion below, we affirm the decision of the Judge.

Department Counsel correctly points out that this record does not support the Judge's application of FCMC 20(b), given that Applicant's unemployment and underemployment were a consequence of his own decisions and, therefore, not "largely beyond his control." Still, in the Judge's unchallenged whole-person analysis, he reached favorable conclusions regarding (1) Applicant's financial counseling; (2) Applicant's payment of one of the four SOR debts and one large non-SOR debt; (3) Applicant's plan for paying his remaining debts; and (4) Applicant's (and his spouse's) full employment and ability to pay off their debts. Under the circumstances of this case, the decision is sustainable.

Department Counsel argues that, in a footnote to the decision, the Judge attempted to grant Applicant a security clearance contingent on future monitoring of his financial condition. Department Counsel correctly states that DOHA has no authority to attach conditions to an applicant's security clearance, and the footnote in question explicitly acknowledges that prohibition. *See, e.g.*, ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000). Despite that, to the extent that a reasonable person might interpret the footnote as an effort to grant a contingent clearance, it can have no such effect as a matter of law.

Order

The Judge's favorable security clearance 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