

KEYWORD: Guideline F

DIGEST: Although Applicant demonstrated that the Judge made an error in his findings of fact, the error is harmless. Applicant failed to mitigate the security concerns arising from his delinquent debts. Adverse decision affirmed.

CASENO: 08-08154.a1

DATE: 12/15/2009

DATE: December 15, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-08154
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 30, 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 September 30, 2009, after the hearing, Administrative Judge Arthur E. Marshall, Jr., 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 certain of the Judge’s findings of fact were based upon substantial record evidence; whether the Judge erred in his application of the

pertinent mitigating factors; and whether the Judge's whole-person analysis was erroneous. Finding no harmful error, we affirm.

The Judge made the following findings of fact: Applicant is an imagery intelligence analyst employed by a federal contractor. He is married and has four adult children, one of whom lives with Applicant while attending college. Applicant has four grandchildren. One of the grandchildren has a father who provides some support. Applicant contributes to his grandchildren's households.

Applicant has numerous delinquent debts, including one for over \$24,000 for an automobile. The Judge found that Applicant and his wife have experienced periods of unemployment and have suffered from medical problems, all of which have contributed to Applicant's financial condition. Applicant was discharged in Chapter 7 bankruptcy in 1997, which resulted from his being held liable for \$20,000 in a dispute over a real estate transaction. Applicant lost a second house in 2000, due to diminished income when his work hours were reduced.¹ He lost a government job in 2004, when he failed to qualify for a security clearance. He was laid off from another job in 2007, when the contract he was working on was terminated.

In addition to the automobile debt, Applicant and his wife have approximately \$4,850 in undisputed debt which they have not yet addressed. Applicant has become more involved in the family's finances recently, and he and his wife have consulted a financial counselor. They have devised a budget, which includes funds for payments on the automobile debt. "Their current budget reflects that Applicant's current position provides him with a higher compensation package than he received in prior years . . . The majority of progress made by Applicant and his wife toward their delinquent debts and credit report was made possible by Applicant's acquisition of his current position and recent financial guidance.

The Judge acknowledged that Applicant's financial problems were due in large measure to causes outside his control. However, the Judge stated that Applicant had not demonstrated a track record of actual debt repayment. *See* ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008); ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999). He noted, for example, that Applicant's financial plan is at least partially dependent on contingent future income such as overtime pay and a possible tax refund, which may not materialize. The Judge concluded that Applicant had not met his burden of persuasion as to mitigation.

Applicant contends that the Judge erred in some of his findings. For example, Applicant challenges the Judge's finding that Applicant's diminished income in 2000 caused him to lose a house. Applicant states that it was his wife, not he, who experienced that problem. The record evidence demonstrates that Applicant's contention is correct. *See* Applicant Exhibit E, Time-line of Events, at 1. The Judge's finding is in error. However, as Applicant himself acknowledges in his brief, this error did not likely affect the outcome of the case. Therefore, it is harmless. *See* ISCR 01-23362 (App. Bd. Jun. 5, 2006); ISCR Case No. 03-09915 (App. Bd. Dec. 16, 2004); ISCR Case No. 01-11192 (App. Bd. Aug. 26, 2002). Applicant also challenges the Judge's statement that his current job is more lucrative than his previous ones have been. Applicant contends that the Judge's

¹See discussion below.

statement does not take into account the fact that his wife no longer works, with the result that his overall disposable income is less than he believes the Judge understood it to be. The Board has examined this finding. It was based on an exhibit provided by Applicant, the household budget. Viewed in that light and in the context of Applicant's presentation of his many financial setbacks, the Judge's finding is not an unreasonable interpretation of Applicant's current financial situation. However, even if the Judge erred, we conclude that the error is also harmless.

After reviewing the record, the Board concludes that 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. The decision draws "a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's decision that "it is not clearly consistent with national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 12. "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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, 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