

KEYWORD: Guideline F

DIGEST: The Judge's material findings are supported by substantial evidence. Favorable decision affirmed.

CASENO: 08-08649.a1

DATE: 05/28/2010

DATE: May 28, 2010

In Re:)
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 -----) ISCR Case No. 08-08649
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 Applicant for Security Clearance)
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Alison O'Connell, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 28, 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 March 4, 2010, after the hearing, Administrative Judge Wilford H. Ross 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 certain of the Judge’s findings of fact were supported by substantial record evidence; whether the Judge erred in his application of the Guideline F mitigating conditions; whether the Judge’s whole-person analysis was in error; and whether the Judge erred by failing to amend the SOR to conform to the evidence adduced at the hearing. Finding no error, we affirm.

The Judge found that Applicant had numerous debts which had, for the most part, been paid off at the time of the hearing. These debts included several tax liens filed against Applicant by both state and federal authorities. One large debt, approximately \$106,000, had not been satisfied. It was for money Applicant received from Child Protective Services (CPS) on behalf of certain of his minor children. This debt was, at the close of the record, being paid off pursuant to a court order. The Judge found that Applicant was current on this debt and that there was no basis in the record to believe that Applicant had received the CPS payments improperly. Applicant has stable employment and is current on all his debts.

Although we acknowledge that there are ambiguities in the record concerning the circumstances of Applicant’s debt to CPS, after examining the Judge’s material findings of security concern we conclude that they are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009); ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007). Department Counsel argues that we should remand the case to the Judge with instructions to amend the SOR in order to address concerns that Applicant received the CPS funds illegally. A Judge is required to resolve all doubt in favor of national security. Directive ¶ E2.2(b). In an appropriate case, this might entail amending the SOR to conform to the evidence adduced at a hearing. *See* ISCR Case 08-02404 at 5 (App. Bd. Jun. 5, 2009); Directive ¶ E3.1.17. A Judge’s decision regarding amending a SOR is reviewed for abuse of discretion. ISCR Case No. 06-19544 at 3 (App. Bd. May 28, 2008). In the case under consideration here, the Judge made a sustainable finding that the evidence was not sufficient to raise an issue of illegality underlying Applicant’s receipt of CPS funds. Accordingly, we conclude that he did not err in failing to amend the SOR.

We have examined the Judge’s decision in light of the totality of the record evidence. We conclude that the Judge’s sustainable findings, summarized above, are sufficient to support a favorable whole-person analysis. Accordingly, we conclude that the Judge’s decision is sustainable. “The Board need not agree with a Judge’s decision in order to find it sustainable.” ISCR Case No. 08-06856 at 2 (App. Bd. Jan. 21, 2010). In light of this conclusion, we need not address the remaining issue concerning the Judge’s analysis of the mitigating conditions.

Order

The Judge's favorable security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board