

KEYWORD: Guideline F

DIGEST: Applicant’s having held a clearance for many years without incident does not preclude the Government from denying him one due to his financial problems. Hearing Office decisions are not binding on the Board. The Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASENO: 09-00395.a1

DATE: 06/08/2010

DATE: June 8, 2010

In Re:)	
)	
-----)	ISCR Case No. 09-00395
)	
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 July 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 May 18, 2010, after the hearing, Administrative Judge Rita C. O’Brien 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 evaluation

of Applicant's credibility; whether the Judge erred in her application of the pertinent mitigating conditions; and whether the Judge's application of the whole-person factors was erroneous. Finding no error, we affirm.

Applicant began working for Federal contractors in 2001 in the field of information systems security. He began working for his current employer, a Defense contractor, in 2008. He is married with four children, two of which are from a previous marriage. He served in the Navy from 1995 to 1999, receiving his first security clearance during that time.

He started investing in real estate in 2005. He purchased an undeveloped lot (Lot A) for \$186,000, financing 100% of the purchase. Later that year he purchased a house for \$660,000, financing 100% of the price by means of two mortgages. The Judge also found that Applicant purchased two other properties, which were not alleged in the SOR. Both were undeveloped lots, although he built a house on one.¹

Applicant subsequently put Lot A up for sale. This was done in 2005, even though he testified that he had purchased it as a long-term investment. He was unsuccessful in his attempts to sell Lot A. In 2007, his wife gave birth to twins, which affected his financial situation. He became unable to pay his mortgages and contacted his creditors to see if he could work out a favorable resolution. Although the lender for Lot A and the lender on the first mortgage for his house were willing to negotiate loan modifications, the lender on the second mortgage on the house was not.

Applicant used credit cards to help with his mortgage payments, as well as a personal loan to the same effect. He entered into a contract with a consumer credit agency to assist him in settling his delinquent credit card debts. Additionally, on the advice of an attorney, Applicant filed for Chapter 7 bankruptcy protection. He was discharged in bankruptcy just prior to the hearing in his case.

Applicant enjoys an excellent reputation for the quality of his job performance, for his trustworthiness, and for his integrity.

In the Analysis portion of the Decision, the Judge stated,

When Applicant purchased properties that were beyond his ability to afford, even with his substantial salary, he was not acting reasonably . . . His speculating was neither prudent nor successful. It led to bankruptcy and the loss of his family's home. Applicant's past risky conduct, and his contradictory testimony, indicate a lack of credibility, reliability, and good judgment. Overall, doubts remain as to Applicant's suitability for a security clearance. Decision at 7-8, 9.

¹The Judge stated that she was considering the purchase of these two unalleged properties as part of the whole person analysis. Although Applicant has challenged her whole person analysis, we find no reason to conclude that the Judge erred. Evidence concerning these properties is relevant to an evaluation of such factors as the nature, extent and seriousness of Applicant's financial situation; the circumstances underlying Applicant's conduct; the frequency and recency of Applicant's conduct; and the presence or absence of rehabilitation. See Directive ¶ E2.2(a).

Accordingly, the Judge denied Applicant's request for a clearance.

Applicant challenges the Judge's credibility determination. Specifically, he contends that the Judge erred in concluding that he had given inconsistent reasons during the hearing for having made the real estate purchases at issue here. We have considered Applicant's argument in light of the record. Applicant testified that he purchased the properties as investments for his retirement and his children's education. Tr. at 35. He also testified that he intended to "flip" the properties to make money (Tr. at 78), which is not totally consistent with the previous statement. Additionally, Applicant's attempt to explain his reasons for the purchases was somewhat confusing. Tr. at 77. We find no reason to disturb the Judge's credibility determination. See Directive ¶ E3.1.32.1.

Applicant draws attention to record evidence that he has held a security clearance for many years without incident or concern. The Judge was required to consider this, along with all the other evidence in the record. However, the government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009), citing *Adams v. Laird*, 420 F. 2d 230, 238-239 (D. C. Cir. 1969), *cert. denied* 397 U.S. 1039 (1970). Applicant cites to new evidence in support of his appeal. For example, he has attached to his Appeal Brief a timeline charting the collapse of the U.S. housing market circa 2007. However, we cannot consider this new evidence. See Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). See also ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009); ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009).

Applicant cites to other Hearing Office decisions which, he contends, support his case for mitigation. The Board gives due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2 (b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. See ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). Applicant's case has significant differences from those which he cites, in terms of the extent of his mortgage indebtedness and his substantial credit card debt as well.

After reviewing the record, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made,'" both as to the mitigating conditions and the whole-person factors. *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 gave due consideration to Applicant's mitigating evidence, noting that the housing downturn and the birth of twins were circumstances outside his control which affected his financial condition. However, she reasonably explained that Applicant's having incurred such extensive mortgage debt in relation to his income undermines his claim of reliability and good judgement. The Judge's adverse 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).

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