

KEYWORD: Guideline F

DIGEST: A judge cannot promise someone a favorable security clearance adjudication, especially, when, as here, she has not yet reviewed all the record evidence. Adverse decision affirmed.

CASENO: 09-06602.a1

DATE: 01/28/2011

DATE: January 28, 2011

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| In Re: |) | |
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| |) | ISCR Case No. 09-06602 |
| |) | |
| 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 May 11, 2010, 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 November 8, 2010, after the hearing, Administrative Judge Mary E. Henry 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 considered all the record evidence and whether the Judge violated an agreement between her and Applicant. Consistent with the following discussion, we affirm the Judge's decision.

The Judge noted that Applicant, age 51, is attending college. The Judge found for Applicant on three debts alleged in the SOR but also found Applicant has four delinquent debts totaling approximately \$40,000. The judge found that Applicant's only plan is to pay these debts when his income improves. The Judge concluded that Applicant had not mitigated the security concerns arising from this finances under Guideline F

Applicant contends that the Judge failed to consider his statement that he initiated a good faith effort at paying his debts by taking classes in pursuit of his bachelor's degree. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case 09-01735 at 2 (App. Bd. Aug. 31, 2010). There is nothing in Applicant's presentation on appeal or in the Decision to rebut the presumption that the Judge considered all of the evidence.

Applicant points to an exchange he had with the Judge at the Hearing. Applicant said: "Rather than face an adverse decision in this matter, I am willing to submit to remedial measures the honorable judge might deem necessary." (Transcript, p. 55) In short order she said to him "I'm going to ask for a few things from you . . . I've got several things I want . . ." (Transcript, p. 56) The Judge proceeded to request five types of documentary evidence from Applicant. Applicant contends that this constituted an agreement between him and the Judge that if he provided the items requested she would not deny him a security clearance. Applicant's reading of the text is not wholly implausible. However, it is not the only plausible reading. The Board is not inclined to adopt a reading which would be plain error. A judge cannot promise someone a favorable security clearance adjudication, especially, when, as here, she has not yet reviewed all the record evidence. The Board acknowledges that the other reading of the transcript is also potentially problematic. Even if they did not have an agreement, the Judge risked compromising her impartiality by advising Applicant what evidence to produce. However, for that reading Applicant (the appealing party here) would not be the aggrieved party and there is no cross-appeal. Therefore, the Board need not resolve any questions raised by the alternative reading.

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: 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