

KEYWORD: Guideline F

DIGEST: A Judge is presumed to have considered all of the evidence in the record. A party's disagreement with the Judge's weighing of the evidence is not enough to establish error. Why it is that Applicant needs a clearance or how often he might actually come into contact with classified information is not relevant to a security clearance determination. Adverse decision affirmed.

CASE NO: 10-10612.a1

DATE: 07/09/2012

DATE: July 9, 2012

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| ----- |) | ISCR Case No. 10-10612 |
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| Applicant for Security Clearance |) | |
| |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 9, 2011, 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 April 26, 2012, after the hearing, Administrative Judge Edward W. Loughran denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge's unfavorable security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings of fact: Applicant is 47 years old. He filed Chapter 7 bankruptcy in 2000, and his debts were discharged in 2001. Applicant continued to have financial difficulties after his bankruptcy. Applicant was supporting a family of eight on a limited income. He has had serious medical problems with his legs requiring nine surgeries since he was a teenager, most recently in 2009. He had extensive periods of unemployment, underemployment, and time away from work because of his leg problems. He was unable to pay his bills, and debts became delinquent.

Applicant filed Chapter 7 bankruptcy in February 2011. Applicant's dischargeable debts were discharged in June 2011. Applicant and his second wife separated in 2007. He was required to pay child support. Court records from November 2011 indicate that Applicant owed \$21,743 in arrearages as of December 2010. Payments have been made by garnishment. He owed \$21,515 in November 2011. The total owed in arrearages did not significantly decrease because the arrearages were accruing interest and \$717 monthly payments were not sufficient to cover the current child support plus the monthly interest owed for the past-due child support. The U.S. Department of Education certified in March 2012 that Applicant has student loans in forbearance. The forbearance is in effect until February 2013. He is responsible for the interest that continues to accrue on his principle balance of \$43,570. Since November 2011, additional interest of \$1,436 has accrued. Applicant retired two debts in June, 2011.

Applicant received financial counseling as a requirement of his bankruptcy. He also sought additional financial counseling. Shortly after his debts were discharged in bankruptcy in 2011, Applicant bought a used 2008 car for about \$22,000. His payments are about \$530 a month for six years. As of the hearing, he was a month late on his car loan payment, which he attributed to a family emergency. He has three credit cards, and he testified that he was 30 days late on one card. Information in the bankruptcy petition, a separate personal financial statement, and a budget he submitted post-hearing show different and sometimes contradictory information. They provide little clarity about Applicant's current financial situation. There is evidence attesting to Applicant's excellent job performance, integrity, dependability, professionalism, work ethic, reliability, trustworthiness, and honesty.

The Judge reached the following conclusions: Applicant had extensive periods of unemployment, underemployment, and time off work because of his long-term medical problems. He is raising his two oldest children without the benefit of child support from their mother. He and his second wife divorced in 2010. These events constitute conditions that were beyond his control. To be fully applicable, AG ¶ 20(b)¹ also requires that the individual act responsibly under the circumstances. Applicant paid two debts and had other debts discharged in bankruptcy. His student loans of more than \$43,000 and child support arrearages of more than \$20,000 were not discharged.

¹“[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]”

Applicant's child support is being paid by garnishment, but the total owed in arrearages has not significantly decreased because of interest payments on earlier past-due child support obligations. Applicant received financial counseling, but he bought a used car shortly after his bankruptcy discharge and is now a month late on the payments. He is 30 days late on one of his credit cards. Applicant did not act completely reasonably under the circumstances, nor did he make a good-faith effort to pay his debts. His finances are not yet under control, and his debt issues are recent and ongoing. The record does not support a conclusion that they are unlikely to recur. Financial concerns remain despite the presence of some mitigation.

Applicant argues that the Judge did not weigh or even consider all the relevant evidence, specifically that Applicant has a steady job which would allow him to meet all his financial obligations, that he has taken two financial courses, and that his financial hardships were the result of circumstances beyond his control. Applicant fails to demonstrate error on the part of the Judge. There is a rebuttable presumption that the Judge considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Notwithstanding his assertions to the contrary, Applicant has not overcome this presumption. In fact, the evidence cited by Applicant was specifically mentioned and commented upon in the Judge's decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). In his decision, the Judge acknowledged numerous matters in mitigation, but concluded that Applicant had not acted completely reasonably and that significant doubts remained concerning whether or not Applicant's finances are under control. That conclusion is sustainable on this record.²

A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence. The Board concludes that the Judge appropriately weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and adequately discussed why the disqualifying conduct established under Guideline F was not mitigated.

Applicant also offers an argument concerning Applicant's employment and the nature of the security clearance his job requires. He notes that he services buildings that contain classified information, that when he enters those buildings he is escorted by another person who has a security clearance, and there is thus no danger to the government, presumably because he would not come into contact with classified information while unsupervised. Applicant has applied for a security clearance. The details as to why the clearance is needed or the degree to which Applicant accesses or comes into contact with classified information are not relevant to the security clearance determination. *See, e.g.*, ISCR Case No. 01-13906 at 3 (App. Bd. Jan. 3, 2003).

In support of his appeal, Applicant points to decisions by the Hearing Office, which he

²The Judge's analysis under the whole-person concept is sustainable as well, contrary to Applicant's assertions.

argues support a favorable determination in this case. The Board gives due consideration to these cases. However, each case must be decided on its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). Nothing contained in the Hearing Office cases cited by Applicant establish error on the part of the Judge in this case.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision, "including 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance 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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board