

KEYWORD: Guideline F

DIGEST: The cases cited by Applicant do not demonstrate error by the Judge. Adverse decision affirmed.

CASENO: 11-01380.a1

DATE: 06/01/2012

DATE: June 1, 2012

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In Re: )  
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 ----- ) ISCR Case No. 11-01380  
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 Applicant for Security Clearance )  
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**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 November 25, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations)

and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 22, 2012, after the hearing, Administrative Judge LeRoy F. Foreman denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law.<sup>1</sup> Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is currently divorced from his second wife. The divorce occurred in 2010. In 2004, Applicant and his second wife purchased a home for \$302,000. The couple separated but reconciled, and the wife wanted to live in a larger home closer to work. The couple purchased a second home, for \$750,000, without selling their first. Although Applicant had misgivings about the purchase, he did not resist it because he did not believe that it would go through. When the loan was approved, Applicant obtained a home equity loan on the first house, using it for several things, including a down payment on the second. He financed the second house through first and second mortgages.

They rented out the first house, although they eventually evicted their tenants and were not able to find others who could pay the rent in the amount of the mortgage payment Applicant owed on the house. Applicant's wife was a realtor, and the couple had a combined net monthly income of between \$11,000 and \$12,000. However, due to the economic downturn, the wife's income was cut in half. The couple separated, and the wife stopped contributing to the mortgage payments. After falling behind on the mortgage payments on the second home, they accepted an offer for a short sale. However, the lender would not approve the sale due to the insufficiency of the price. The home was eventually the subject of a foreclosure action. Record evidence reflects a loan balance of \$603,958 and a fair market value of \$375,000. As of the date of the hearing, Applicant had not contacted the lender regarding a potential deficiency, and the lender had not contacted him. After the hearing Applicant submitted a statement that he had contacted the lender and was advised by an unidentified person that he owed no more money. However, he stated that the lender would not provide him with a IRS form 1099-C, Cancellation of Debt.

Applicant's net monthly income is about \$5,300. His monthly expenses are about \$1,496. After making his debt payments on the two houses, he has a remainder of about \$166. Applicant's divorce decree with his second wife made no provision for sharing of the debt related to the second home. She testified at the hearing that she had no intention of contacting the lender of the second home. Applicant enjoys an excellent reputation for the quality of his work.

In the Analysis, the Judge concluded that concerns arising from a medical debt and from the mortgage on Applicant's first home had been mitigated. However, the Judge stated that Applicant's having purchased an expensive second home before selling his first impugns his ability to act responsibly. The circumstances of this purchase suggest that Applicant might be susceptible to

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<sup>1</sup>Department Counsel withdrew the Guideline E allegations prior to the hearing.

manipulation. He stated that Applicant's conduct regarding the possible deficiency judgment also provides evidence of irresponsible action. Applicant took no steps to determine the amount of any deficiency that might have resulted, nor did he take any action to compel his wife to contribute to satisfaction of the mortgage debt. Although Applicant's post-hearing submissions assert that he owes nothing more on the second house, the Judge noted that Applicant had apparently not received a IRS Form 1099-C, issued upon cancellation of a debt. The Judge concluded that Applicant had not mitigated the Guideline F security concerns arising from his purchase of the second home.

Applicant cites to cases by Hearing Office Judges which, he contends, support his case for a clearance. We give due consideration to them. As Applicant acknowledges, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 10-02660 at 2 (App. Bd. Jun. 6, 2011). The cases which Applicant has cited contain significant factual differences from his own. Each case must be decided on its own merits. Directive, Enclosure 2 ¶ 2(b). The cases Applicant has cited do not demonstrate error by the Judge. The record supports a conclusion 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.'" *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 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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

### **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