

KEYWORD: Guideline F

DIGEST: The Judge made explicit findings about the mitigating evidence cited by Applicant. Applicant has not rebutted the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 11-03476.a1

DATE: 12/12/2012

DATE: December 12, 2012

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In Re:)	
)	
-----)	ISCR Case No. 11-03476
)	
)	
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. DOHA issued a statement of reasons (SOR)¹ 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 September 17, 2012, after the hearing, Administrative Judge Paul J. Mason 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 of the record evidence and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following findings pertinent to the issues raised on appeal: Applicant works for a Defense contractor. He has held a security clearance since 1996. He served in the Army, the National Guard, and the Reserves from 1996 until 2007. He was deployed to combat zones several times during his military service. He is married, and his wife is expecting a child. He has another child from a previous marriage.

As a child, Applicant was abandoned by his parents and became a ward of the state. He lived with about 10 foster families until he was 18 and joined the military.

Applicant has numerous delinquent debts, for a state tax lien, an apartment rental agreement, medical expenses, an automobile loan, etc. Some of these debts have been paid, though after Applicant's receipt of the SOR or after the hearing. The Judge cited to inconsistent statements Applicant made about some of his debts. For example, concerning the car loan, Applicant advised in an interrogatory response that the car had been totaled and the debt paid off. At the hearing, he testified that the loan was not his and had been obtained in his name due to identity theft. In an interrogatory response he averred that he had paid the tax lien as of July 2011. Documentary evidence later demonstrated that the lien had actually been paid in February 2012. He also provided inconclusive information about a \$367 debt that he described either as an overdue library book or a fine for neglecting to register a car. The Judge found that Applicant had failed to corroborate some of his statements about his efforts to address his debts. He did note that two of the debts alleged in the SOR had been removed from Applicant's credit report.

Applicant enjoys a good reputation for his job performance. He is certified as a security information specialist. The Judge noted that the letters commending Applicant's job performance used the same wording, although the letterheads, dates, and contact information differ. The Judge found that the identical wording of the letters reduced their probative weight.

In the Analysis, the Judge cited to Applicant's inconsistent and false statements, his lack of corroborating information, and the relative recency of his repayments despite the financial ability to have done so long before. Indeed, the Judge stated that Applicant's four repaid debts had been

¹The SOR is not dated. Applicant's Response to the SOR is dated December 5, 2011.

satisfied only after he had received the SOR. Under the circumstances, the Judge concluded that Applicant had not met his burden of persuasion as to mitigation.

Applicant contends that the Judge did not consider his evidence that (1) some of his debts had been repaid; (2) two of the debts had been removed from Applicant's credit report; (3) he had served his country in combat zones; and (4) he had undergone a difficult childhood. Applicant also cited to his character evidence and to the lack of evidence of security violations or of trouble with the law. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-07219 at 5 (App. Bd. Sep. 27, 2012). The Judge made explicit findings about the evidence Applicant has cited and discussed much of this evidence in his Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence.

Applicant's brief cites to some Hearing Office cases which, he contends, support his efforts to obtain a clearance. We have given these cases due consideration. However, Hearing Office decisions are not mandatory authority for other Hearing Office Judges or the Appeal Board. *See, e.g.*, ISCR Case No. 09-08099 at 3 (App. Bd. Sep. 14, 2012). Moreover, Applicant's case has significant differences from those cited in the brief, notably the Judge's conclusions about Applicant's credibility. The cited cases do not demonstrate that the Judge erred in his adverse decision.

The Judge's 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 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