

KEYWORD: Guideline F

DIGEST: The record does not support a conclusion that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASENO: 11-03623.a1

DATE: 07/25/2012

DATE: July 25, 2012

In Re:)
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 -----) ISCR Case No. 11-03623
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)
 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 January 13, 2012, 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 decision on the written record. On May 31, 2012, after considering the record, Administrative Judge Robert Robinson Gales 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. Consistent with the following, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a systems engineer for a Defense contractor. He served in the U.S. military for 18 months. He attended college, receiving a bachelor’s degree in 1977. Although the record is silent as to his employment status between 1977 and 1998, he has held a security clearance since 1987.

Applicant purchased a house, taking out two mortgages and making no down payment. He took out a third mortgage in order to finance the construction of a swimming pool at his house. The total amount of the mortgages was \$450,000. His monthly mortgage payment was \$3,650. Over time, the value of his house decreased to \$220,000, leaving him with no equity. He had the ability to continue making his mortgage payments. However, the negative equity impaired his ability to retire in 3 to 4 years, as he had hoped to do.

Applicant consulted with two attorneys, who advised him that he earned too much money for Chapter 7 bankruptcy protection and that his monthly payments under Chapter 13 would be \$7,600. Therefore, Applicant decided to default on his mortgage payments, in hopes that he could work with his lenders to reduce both the principal owed and his monthly payments. Merely reducing his monthly payments would not increase his equity in the house. He stopped making mortgage payments in July 2010. He was eventually advised, however, that he did not qualify for loan modification. Applicant permitted the three mortgages to go into foreclosure.

At the end of 2010, Applicant earned an annual salary of \$117,000, and his wife earned one of \$65,000. He submitted no evidence to corroborate his claims that he was paying off all accounts that he had intended to resolve in bankruptcy, including credit cards, car loans, and student loans. There is no evidence in the record of financial counseling.

In the Analysis, the Judge concluded that Applicant’s financial problems were neither attenuated by the passage of time nor infrequent.¹ He acknowledged that a downturn in the real estate market had occurred during the past few years, which was beyond Applicant’s control. However, the Judge concluded that Applicant had not explained what impact that downturn had actually exerted on his ability to address his financial circumstances. The Judge stated that

¹Directive, Enclosure 2 ¶ 20(a): “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment[.]”

Applicant had not acted responsibly under the circumstances.² The Judge also concluded that there was no evidence in the record to demonstrate that Applicant's financial problems were being resolved or were under control.³ He did resolve an SOR debt in Applicant's favor,⁴ but he concluded that Applicant had failed to demonstrate a track record of debt resolution regarding the delinquent mortgages on his house.

Applicant cites to a decision by another Hearing Office Judge which, he contends, supports his case for a security clearance. We give this decision due consideration. However, Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 08-09236 at 4 (App. Bd. Jan. 14, 2010). The case which Applicant cites involves circumstances underlying the debts, which are significantly different from his own. Applicant's appeal brief includes evidence from outside the record, such as a more recent credit report, a document showing the final bid on a trustee's sale of his house, documents showing the declining assessed value of Applicant's home over the past few years, etc. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Much of Applicant's appeal brief consists of a disagreement with the Judge's weighing of the evidence. He cites to his overall history of financial stability, to evidence that he had stopped making mortgage payments in order to apply (unsuccessfully) for a loan remodification, and to other things which he believes that the Judge did not examine in their proper context. However, while the Judge considered the evidence which Applicant has cited, his decision rested in large measure on Applicant's reasons for defaulting on his mortgage payments (which had little to do with the influence of circumstances outside Applicant's control), on evidence that Applicant had the financial capacity to make those payments had he chosen to do so, and on a paucity of record evidence demonstrating that Applicant's financial problems were being resolved. The record does not support a conclusion that the Judge mis-weighed the evidence. 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 that 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. 11-04742 at 2 (App. Bd. Jun. 20, 2012).

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.*

²Directive, Enclosure 2 ¶ 20(b): "The conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances[.]"

³Directive, Enclosure 2 ¶ 20(c): "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control[.]"

⁴One of the SOR debts was for a mobile home loan account that had been cancelled. The Judge cited to evidence that Applicant had sold the home through a short sale and that the lender had cancelled the balance owed on the loan. In resolving this debt in Applicant's favor, the Judge relied on Directive, Enclosure 2 ¶ 20(d): "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]"

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: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board