

KEYWORD: Guideline F

DIGEST: The Judges findings contained statements which were technically erroneous. However, the errors were harmless. Adverse decision affirmed.

CASENO: 11-04176.a1

DATE: 12/18/2012

DATE: December 18, 2012

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In Re: )  
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 ----- ) ISCR Case No. 11-04176  
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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**

Paula W. Phinney, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 17, 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 hearing. On September 19, 2012, after the hearing, Administrative Judge Roger C. Wesley 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 failed to consider all of the record evidence; whether the Judge’s findings contain errors; and whether the Judge’s adverse security clearance 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 is a production supervisor for a Defense contractor. He served in the Air National Guard and as a civilian employee of the Guard for 22 years. In 2010, he changed jobs, which resulted in a loss of income.

Applicant experienced financial problems in the 1990s. Accordingly, he filed for Chapter 7 bankruptcy protection and was discharged in 2002. After that discharge, however, he accumulated more delinquent debt, in the amount of about \$19,000. Additionally, his home went into foreclosure. He consulted a debt consolidation firm in July 2012, completing an action plan and a budget. The Judge stated that he shows promise concerning his debts, although the record contains little evidence showing actual debt payment. Applicant terminated his relationship with the debt consolidation firm and has elected to deal with his creditors personally. However, as of the close of the record, Applicant had “made no documented payment progress with any of his listed consumer creditors.” Decision at 4.

Applicant received numerous decorations and awards during his service to the National Guard. He enjoys an excellent reputation among his supervisors and co-workers for his job knowledge, team spirit, leadership, etc. His civilian performance evaluations are excellent. However, few of his character witnesses had detailed knowledge of his financial problems.

In the Analysis, the Judge concluded that Applicant’s financial situation raised security concerns under Guideline F. He also concluded that Applicant had failed to demonstrate a track record of debt repayment. Although citing to Applicant’s evidence of good character and good duty performance, and to evidence of his reduction in income, the Judge found that Applicant had not met his burden of persuasion as to mitigation.

Applicant contends that the Judge did not consider evidence favorable to him. For example, he cites to his good character and duty performance, arguing that the Judge failed to take his favorable evidence into account. 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). In this case, the Judge made detailed findings concerning Applicant’s character evidence and his evidence of job performance. Applicant’s argument on appeal is not sufficient to rebut the presumption that the

Judge considered all of the evidence in the record, including the evidence Applicant submitted in his own behalf and cited in his brief.

We construe Applicant's brief as challenging the Judge's findings regarding his debt repayment. We note, for example, the finding quoted above that Applicant had made no progress with his creditors. Applicant cites to evidence that purports to demonstrate payment of four of the eighteen SOR debts. Applicant Exhibit (AE) AA, does show payment on four debts, two of which are to creditors listed in the SOR. Taken literally, AE AA might undermine the Judge's categorical statement that Applicant had demonstrated no debt repayment. However, the tenor of the Judge's decision was that Applicant's presentation consisted more of promises for future action rather than of a demonstrated track record of debt repayment. *See, e.g.*, ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010) (Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner). This perspective is consistent with the record evidence that was before the Judge. Therefore, even if there are errors in the Judge's findings, these errors did not likely influence the outcome of the case. Accordingly, they are harmless. *See, e.g.*, ISCR Case No. 10-09281 at 4 (App. Bd. Mar. 5, 2012). Applicant has cited to some Hearing Office cases which he contends support his case for a security clearance. We give these cases due consideration. However, they are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 09-08099 at 3 (App. Bd. Sep. 14, 2012).

The Judge's decision is sustainable. "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: Jean E. Smallin

Jean E. Smallin  
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