

KEYWORD: Guideline F

DIGEST: Conduct not alleged in a SOR may be considered for several reasons, including evaluating an applicant’s case for mitigation. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility. Adverse decision affirmed.

CASE NO: 11-05365.a1

DATE: 05/01/2012

DATE: May 1, 2012

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| In Re: |) | |
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| ----- |) | ISCR Case No. 11-05365 |
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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

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 28, 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 February 29, 2012, after the hearing, Administrative Judge John Grattan Metz, Jr., 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’s findings were supported by substantial record evidence; whether the Judge erred by considering conduct not alleged in the

SOR; whether the evidence established a nexus between Applicant's financial condition and the possibility that she would engage in criminal activity; whether the Judge considered all of the record evidence; 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 pertinent findings of fact: Applicant is an employee of a Government contractor. She has financial problems, the SOR alleging 14 delinquent debts totaling over \$26,000. Applicant has paid or settled five of these debts and has made some payment on others. Two of the alleged debts were not hers. However, her largest debts remain unpaid. She also owes the Internal Revenue Service (IRS) about \$2,500 for unpaid taxes, a debt not alleged in the SOR. Applicant experienced unemployment since 2003. Twice she left jobs due to deaths in the family. Once she was terminated during a probationary period, and on another occasion she left a job because she believed that a work appraisal was unfair. She worked for a while as an armed security guard, but lost that job because she failed to pass the firearm qualification. Applicant has not received financial counseling or submitted a budget. She entered into a repayment plan with the IRS, although it is not clear how many payments she made before she stopped working. She enjoys a good reputation for the quality of her work performance, character, community involvement, and academic achievements.

In the Analysis, the Judge noted that Applicant's financial problems were affected by her periods of unemployment, stating, however, that most of her unemployment was due to her own choices rather than to circumstances beyond her control. He stated that her failure in the firearm qualification was not totally a circumstance beyond her control and that she had failed to explain why she remained unemployed for so long in the early to mid-2000s. The Judge stated that her three largest debts are over \$5,000, and that she has a \$3,000 delinquent rent account as well. When viewed in light of her unpaid taxes, Applicant's financial situation is not likely to be resolved in the foreseeable future, and she has taken little action to address it.

Applicant contends that some of the Judge's findings of fact were in error. Among other things, she states that two of the alleged debts were not hers and that her debt total was less than the \$26,000 that the Judge found. She also challenges the Judge's statements that most of her unemployment was voluntary and that she had taken little action to resolve her debts. Some of the challenged statements, such as those addressing the adequacy of Applicant's efforts at debt resolution, are conclusions drawn from the findings rather than findings themselves. We note that the Judge actually found in Applicant's favor regarding the two debts that she claimed were not hers and that the figure of \$26,000 was a statement as to the total amount of debt alleged in the SOR, rather than of the portion of Applicant's debts remaining unpaid at the close of the record. Moreover, the Judge's findings about the reasons for Applicant's unemployment are drawn from Applicant's own answers to questions in the Security Clearance Application (SCA), Government Exhibit 1, Section 13. Viewed in light of the totality of the record evidence, the Judge's material findings of security concern are based on substantial record evidence or constitute reasonable characterizations or inferences that can be drawn from the record. *See, e.g.*, ISCR Case No. 10-05750 at 2 (App. Bd. Dec. 8, 2011).

Applicant contends that the Judge erred by considering evidence of her tax debt, since it was not alleged in the SOR. Conduct not alleged in a SOR may be considered for a number of reasons,

such as assessing an applicant's credibility and evaluating an applicant's evidence in mitigation and extenuation. *See, e.g.*, ISCR Case No. 08-06859 at 4 (App. Bd. Oct. 29, 2010). In this case, the Judge addressed the tax debt in his overall discussion of the possible application of the mitigating conditions. Accordingly, he considered it in its proper context. We find no error in the Judge's treatment of this evidence.

Applicant contends that the evidence does not establish a nexus between her financial problems and the likelihood that she would commit crimes to resolve those problems. She contends that the Judge relied upon assumptions rather than evidence or case law in concluding that her circumstances raised security concerns.

The Guideline F security concern is as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, Enclosure 2 ¶ 18.

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 10-09511 at 3 (App. Bd. Nov. 17, 2011). In this case, Applicant's answers to the SCA and to DOHA interrogatories, along with the two credit reports, are sufficient to raise the two disqualifying conditions that the Judge addressed, 19(a)¹ and (c).² *See* ISCR Case No. 10-06791 at 2 (App. Bd. Dec. 12, 2011). The Judge was not required to make an explicit finding regarding nexus, and we find no error in his analysis.

Applicant cites to evidence favorable to her, for example that she had not accepted certain settlement offers because she had become unemployed. We interpret her argument to mean that the Judge did not consider all of the record evidence. However, a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-07597 at 3 (App. Bd. Oct. 19, 2011). The Judge made findings regarding the affect Applicant's unemployment exerted on her finances. However, his conclusion that the length and frequency of her unemployment was not adequately explained and that she had not demonstrated responsible action in regard to the totality of her debts was supported by the record.

Applicant has not rebutted the presumption that the Judge considered all of the record

¹Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]"

²Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

evidence. 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: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, 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