

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Although the Judge considered evidence that Applicant’s financial circumstances were to some extent beyond his control, he plausibly explained why Applicant had failed to act responsibly in response to those circumstances. Adverse decision affirmed.

CASE NO: 11-08087.ind

DATE: 03/05/2013

DATE: March 5, 2013

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In Re:)	
-----)	ISCR Case No. 11-08087
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 19, 2012, DoD 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 December 12, 2012, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings

The Judge found that Applicant has worked for his current employer, a Defense contractor, since 2006. Applicant has ten delinquent debts totaling \$28,061. The debts were related to an accident Applicant suffered in 2007, which caused him to be hospitalized and to miss work. He set up a payment plan on two hospital accounts. These two accounts were later split into seven, each requiring payment of \$25 a month. He paid on two of the accounts but not on the remainder. As a consequence, his accounts were placed in collection. Applicant acknowledged to the clearance investigator that he had not been responsible with his bills. Seven of the nine debts alleged in the SOR are owed to a single collection agency. He provided copies of money orders demonstrating three payments of \$25 each to that agency, although the dates on two of these money order are not legible. In addition to his medical expenses, Applicant also has a charged-off credit card account. He advised that if he knew what collection agency was handling this account he would make arrangements to pay it off.

The Judge's Analysis

The Judge acknowledged Applicant's evidence of his accident, which was a condition beyond his control that contributed to his financial problems.¹ However, he also concluded that Applicant had failed to demonstrate responsible action in regard to his debts. He stated that Applicant had been fully and continuously employed in the years since his accident, but that he had made few payments on some of the SOR debts and had provided no proof of action regarding others. In the whole-person analysis, the Judge stated that Applicant had not demonstrated a meaningful track record of debt repayment or a realistic plan of debt resolution.² Accordingly, he concluded that Applicant had not mitigated the security concerns arising from his delinquent debts.

Discussion of Appeal Issues

Applicant cites to record evidence of his accident and of the effect that the accident had on his finances. He also points to evidence of his debt repayment efforts. He argues that this evidence supports his request for a clearance. To the extent that he is arguing that the Judge failed to consider the cited evidence, a Judge is presumed to have considered all of the evidence in the record. *See,*

¹See Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

²See, e.g., ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good faith effort to resolve debts must be evidenced by a meaningful track record of repayment); ISCR Case No. 11-03403 at 2, n. 4 (App. Bd. Aug. 23, 2012)(In a Guideline F case, an applicant must act responsibly under the circumstances and develop a reasonable plan for repayment, accompanied by conduct which evidences a serious effort to effectuate the plan).

e.g., ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 18, 2012). In the case before us, the Judge made detailed findings about Applicant’s accident and about his efforts to repay his debts, discussing these findings in the Analysis portion of the Decision. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he supplied a reason to believe that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. To the extent that Applicant is arguing that the Judge improperly denied him mitigation because the accident was beyond his control, such argument is not persuasive. The Judge noted that the accident was beyond Applicant’s control but explained that Applicant had not acted responsibly under the circumstances. Given the record that was before him, the Judge’s overall adverse conclusion about Applicant’s security worthiness is supportable.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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 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