

KEYWORD: Guideline F

DIGEST: Applicant admitted most of the SOR allegations. Other record evidence includes credit reports, Applicant's answers to interrogatories and his security clearance application. The Judge had sufficient record evidence to conclude that Guideline F security concerns had been raised.

CASENO: 11-09333.a1

DATE: 11/20/2012

DATE: November 20, 2012

In Re:

Applicant for Security Clearance

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) ISCR Case No. 11-09333
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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 September 14, 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 decision on the written record. On July 31, 2012, after considering the record, Administrative Judge Noreen A. Lynch 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 properly applied the Disqualifying Conditions; whether the Judge properly applied the Mitigating Conditions; whether the Judge failed to consider 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 a high school graduate who has attended a community college. Married with two children, he was in the Army from 2000 to 2010. He has held a security clearance since 2004. Applicant’s SOR alleges 19 delinquent debts, including a home foreclosure in the amount of \$109,198. Applicant provided documentary evidence of his resolution of several of the debts, although the unresolved debts include the mortgage. Applicant provided no evidence of unemployment or of any other reason for his financial problems. He advised that, during periods of deployment while he was in the military, his wife handled the family accounts. After expenses, the monthly net remainder of Applicant’s income is \$5,895.

In the Analysis, the Judge concluded that two Guideline F Disqualifying Conditions applied to Applicant’s circumstances—19(a)¹ and 19(c).² In evaluating Applicant’s case for mitigation, she stated that his debts were ongoing and recent, and that there is no evidence to show that the debts do not cast doubt upon Applicant’s reliability, trustworthiness, or good judgment.³ She also stated that the record does not support the application of Mitigating Condition 20(b).⁴ She extended application of 20(d)⁵ to those debts which Applicant had demonstrated that he had resolved, but, on the whole, she was not able to conclude that Applicant’s financial problems are being resolved or

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

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

³Directive, 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.”

⁴Directive, 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[.]”

⁵Directive, Enclosure 2 ¶ 20(d): “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts[.]”

are under control.⁶ She concluded that Applicant had not presented sufficient information to mitigate the security concerns in his case.

Applicant contends that the Judge erred in concluding that the above-referenced Disqualifying Conditions applied to his circumstances. To the extent that he is arguing that the evidence did not raise security concerns, we note that Applicant admitted most of the allegations in the SOR, with explanations. In addition, the Government presented evidence, including credit reports, Applicant's answers to interrogatories, and his security clearance application, which contains Applicant's answers to questions about his financial condition. All in all, the record is sufficient to raise security concerns under Guideline F. *See, e.g.*, ISCR Case No. 10-00925 at 3 (App. Bd. Jun.26, 2012). Applicant cites to record evidence, including his military service and his wife's having handled the finances during his extended deployments. To the extent that he is arguing that the Judge did not consider this evidence, we note that 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 discussed the evidence which Applicant has cited, but she reasonably explained why she concluded that he had not met his burden of persuasion as to mitigation. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Applicant's brief relies to a substantial extent on evidence from outside the record, including documents which post-date the Judge's decision. This is evidence that we cannot consider. Directive ¶ E3.1. 29.

We have considered Applicant's argument about the Judge's application of the mitigating conditions. Based upon the record as a whole, and bearing in mind that Applicant bears the burden of persuasion, we find no error in her analysis. 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 decision is **AFFIRMED**.

Signed: Michael Y. Ra'an

Michael Y. Ra'an
Administrative Judge
Chairperson, Appeal Board

⁶Directive, 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[.]"

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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