

KEYWORD: Guideline F

DIGEST: Even if Applicant no longer owes the debt, the Judge's statement that the circumstances underlying the acquisition of undermined the case in mitigation is sustainable. Adverse decision affirmed.

CASENO: 11-12803.a1

DATE: 02/21/2014

DATE: February 21, 2014

In Re:)
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-----) ISCR Case No. 11-12803
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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 Department of Defense (DoD) declined to grant Applicant a security clearance. On February 22, 2013, 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 13, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Rita C. O’Brien 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 erred in finding that his delinquent debts had not been extinguished and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant enlisted in the U.S. military from 1982 to 2007. He has worked for a Defense contractor since 2008. Applicant stated in his security clearance application that he has held a security clearance since 2001, although in his Answer to the SOR he stated that he had held one since 1984. Applicant is also a real estate investor.

The SOR lists two delinquent mortgages on Applicant’s principal residence and defaulted mortgages on two investment properties. Applicant stated that he had owned as many as eight investment properties at the same time. He was able to meet his mortgage payments by renting the properties. However, when the housing market crashed in 2008, his tenants were unable to pay their rents. Applicant sought ways to protect his interest in the properties, but he eventually defaulted on nine mortgage loans, all of which went into foreclosure.

Two of the allegations address a first mortgage and home equity line of credit on Applicant’s home. Applicant was offered an “in house” loan modification, but he did not accept because he would not have been able to make the monthly payment. Applicant’s former wife filed a bankruptcy petition listing the debt, but the petition is in her name only. She is living in the house. Applicant advises that he intends to try a short sale. If unsuccessful, he will attempt to negotiate a settlement or submit a deed in lieu of foreclosure. The record contains a letter from an attorney regarding the state anti-deficiency laws. The attorney opined that, if a short sale is permitted for his residence, Applicant will owe no deficiency resulting therefrom.

Two other allegations pertain to investment properties Applicant purchased in 2006. He defaulted on the loans, and the properties were foreclosed. Both were sold for less than the amounts owed on the loans. Applicant does not believe that he is liable for these deficiencies. He cited to the letter from the attorney to the effect that, under the applicable anti-deficiency law, a lender is prohibited from collecting a deficiency judgment under circumstances such as those underlying the two investment properties. However, the Judge found that Applicant’s circumstances were addressed by a different provision of the law, under which Applicant would remain liable.

The record contains evidence of other debts by Applicant. These include numerous credit card accounts, with balances up to \$43,000, and two auto loans, with balances totaling almost \$65,000. These debts were not alleged in the SOR. However, the Judge stated that they could be

considered for certain limited purposes, such as evaluating Applicant's credibility, his case for mitigation, and the extent to which he has shown rehabilitation (*see* ISCR Case No. 09-06771 at 2-3 (App. Bd. Jan. 4, 2011)).

Applicant's financial statement shows a monthly remainder, after expenses and debt repayment, of \$1,464. These debt payments include \$2,800 for the residential mortgages and \$1,300 for the auto loans.

The Judge's Analysis

In evaluating Applicant's circumstances, the Judge cited to evidence that he had purchased nine pieces of real estate, with mortgages ranging from \$50,000 to \$440,000. Nine loans became delinquent, and loans for Applicant's current residence are delinquent. She stated that, without further information about Applicant's income and expenses at the time he assumed these debts, she could not determine if he was spending beyond his means. She found his actions in acquiring the debts to be troubling, Applicant having purchased multiple properties that he eventually could not support and that resulted in many foreclosures. She concluded that his conduct evidenced a lack of good judgment. Although the housing market crash was a circumstance outside Applicant's control, she concluded that the file contained insufficient information about Applicant's specific actions regarding debt resolution in the years 2008 through 2013. She also stated that the evidence was not sufficient to demonstrate a good-faith effort to repay creditors or otherwise to resolve debts.

In the whole-person analysis, the Judge cited to evidence that Applicant is a real estate investor in addition to a Defense contractor. She concluded that the risky nature of his having purchased numerous properties that, ultimately, he could not support undermined his case for a clearance, even if he did not owe deficiency judgments, as asserted in the letter from his attorney. The Judge concluded that Applicant's circumstances raised doubts about his suitability for a clearance that Applicant had failed to mitigate.

Discussion

Applicant contends that the Judge erred in finding that he still owed the deficiency judgments resulting from the foreclosure sales of the two investment properties. In support, he cites to the letter from his attorney, described above. However, assuming, without deciding, that the challenged finding is erroneous, it did not likely affect the Judge's overall decision. The Judge herself stated that the underlying circumstances of Applicant's delinquent debts undermined his case for a clearance even if he no longer owed any deficiencies. Indeed, a Guideline F case requires a Judge to consider the totality of an applicant's circumstances, including the reasons for the financial problems as well as the applicant's efforts to address them, in making a clearance decision. *See, e.g.,* ISCR Case No. 10-00925 at 2 (App. Bd. Jun. 26, 2012). Accordingly, the Judge's material findings of security concern are supported by substantial record evidence. *See, e.g.,* ISCR Case No.

11-02311 at 3 (App. Bd. Nov. 26, 2012).¹ Applicant has not cited to an error that probably affected the outcome of the case.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. We note the Judge's comment that there is a paucity of record evidence about specific actions Applicant took in regard to his debts. 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

¹ In addition, the Judge's findings about non-alleged debts support her adverse decision.