

KEYWORD: Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge was impartial. Applicant failed to rebut the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 11-13949.a1

DATE: 09/05/2013

DATE: September 5, 2013

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| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 11-13949 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
|                                  | ) |                        |

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Richard L. Morris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 4, 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 hearing. On June 26, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 was biased against Applicant; whether the Judge failed to consider all of the record evidence; whether the Judge erred

in his application of the mitigating conditions; and whether the Judge erred in his application of the whole-person factors. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant has eight delinquent debts, for medical expenses, credit cards, a mortgage, and a debt to the IRS. He paid three of them and settled two others in March 2013. He has an approved contract for a short sale of his house. He did not corroborate a claim to have reached a repayment agreement with another of his creditors. The tax liability arose from a business operated by Applicant's wife. She did not set aside enough funds to satisfy her payroll tax obligations. This debt is attributable to Applicant because he and his wife file their tax return jointly. The wife set up a repayment plan with the IRS; however, she failed to make the required payments. She established a second repayment plan in 2011. Although she had made payments in March and April 2013, she made none the following May.

Applicant experienced unemployment in 2010, coinciding with a decline in his wife's income. Additionally, the housing market collapsed, which affected Applicant's financial situation. Applicant carried significant credit card balances prior to his unemployment. However, unemployment and the other circumstances described above exacerbated his problems. Applicant's and his wife's job situations improved later in 2010, restoring their income to is pre-unemployment level.

Applicant's finances were also affected by his and his wife's decision, shortly after their marriage in 1994, to divide household expenses between themselves and that each would be separately responsible for their share. In addition, in 2006 they refinanced their house with an adjustable rate mortgage (ARM), the payments increasing dramatically in 2011 to the extent that they could not keep up with the payments.

Applicant enjoys a good reputation for the quality of his work performance, as well as for his honesty and trustworthiness. He has attended some financial seminars at his church, but he did not provide a comprehensive budget.

### **The Judge's Analysis**

The Judge concluded that Applicant's financial circumstances raised security concerns under Guideline F. He also concluded that Applicant had failed to mitigate those concerns. He cited to evidence that Applicant had significant debt prior to his unemployment and to Applicant's decision to refinance his home with an ARM, which were circumstances within Applicant's control that affected his financial condition. The Judge also noted that Applicant took no action to address his debts until after he had received the SOR, undercutting Applicant's efforts to demonstrate responsible action.

### **Discussion**

In his appeal brief, Applicant challenges the Judge's conclusion that he had been dilatory in addressing his debts. He states that the mitigating conditions do not require consideration of how quickly debts are paid, that "the speed of the debt is **NEVER** discussed in the" Guidelines. Applicant's Brief at 6. He argues that the Judge improperly evaluated the evidence according to "his own 'moral code'" rather than with reference to the Directive. We construe this as an argument that the Judge was biased against Applicant.

There is a rebuttable presumption that a Judge is impartial, and a party seeking to rebut that presumption has a heavy burden of persuasion on appeal. The fact that a Judge reached adverse conclusions is not sufficient to demonstrate bias. *See, e.g.*, ISCR Case No. 09-07395 at 2 (App. Bd. Sep. 14, 2010). A Judge is required to decide each case on its own merits. Directive, Enclosure 2 ¶ 2(b). In applying the mitigating conditions and whole-person factors, a Judge is required to exercise sound discretion in light of the evidence viewed as a whole. *See, e.g.*, ISCR Case No. 08-01122 at 3 (App. Bd. Feb. 9, 2009).

In this case, the Judge's reliance upon evidence that Applicant had been dilatory in resolving his debts was not misplaced. In examining the evidence as a whole, it is proper for a Judge to consider that an applicant, aware of his debts, has undertaken to address them only after having been advised that his clearance is in jeopardy. Such evidence is relevant in evaluating the applicability of three disqualifying conditions and four mitigating conditions, since it clarifies the extent to which an applicant has demonstrated responsible action in regard to his debts and whether he has demonstrated a likelihood that he will avoid security-significant debts in the future. *See, e.g.*, ISCR Case No. 10-07080 at 2 (App. Bd. Oct. 12, 2011). Applicant has pointed to nothing that would persuade a reasonable person that the Judge lacked the requisite impartiality. Neither has he demonstrated that the Judge failed to conduct a reasonable analysis of Applicant's circumstances in light of the requirements of the Directive. This assignment of error rests on his disagreement with the ultimate outcome of his case, which is not sufficient to rebut the presumption that the Judge undertook his duties with impartiality.

Applicant contends that the Judge failed to consider all of the evidence. Among other things, he points to evidence that he has held a clearance for several years without incident and that his disciplinary and police records are clean. He also points to evidence of his family circumstances and his community involvement. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012). A Judge is not required explicitly to discuss everything in the record, which would be a practical impossibility. In this case, the Judge's decision was consistent with the record that was before him. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record.

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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

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