

KEYWORD: Guideline F

DIGEST: The Judge's material findings are supported by substantial record evidence. The Judge did not commit error in considering a debt not listed in the SOR, when he considered it for the limited purposes of assessing credibility, mitigation, and the application of whole-person factors. Adverse decision affirmed.

CASE NO: 12-01038.a2

DATE: 06/26/2013

DATE: June 26, 2013

_____)	
In Re:)	
)	
-----)	ISCR Case No. 12-01038
)	
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 15, 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 January 29, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On March 22, 2013, we remanded the case to the Judge for a new Decision. The Judge issued the new Decision on March 29, 2013. Applicant again appealed in accordance with the Directive.

Applicant raises 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 Judge failed to consider all of the evidence; and 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 made the following findings pertinent to the issues raised on appeal: Applicant is a construction specialist working for a Defense contractor. From 1995 to 2006 he ran his own company.

In the early 2000s, Applicant's company had a disagreement with a customer over the scope of work to be performed under a contract as well as over payments, including a \$285,000 "draw" needed to finance labor and equipment. Applicant sued the customer, but the settlement of \$171,000 was not sufficient to cover his bills, especially after deducting his lawyer's fee. As a consequence, he was unable to obtain performance and payment bonds for his company, which limited his ability to secure construction contracts. From 2005 to 2006, he received inadequate payments, causing him to fall behind on taxes.

Applicant has experienced unemployment during the past few years, and his annual income dropped dramatically in 2007 through 2009, although his wages in 2010 exceeded \$136,000. He has also performed work on construction jobs overseas in support of U.S. military operations.

Applicant owed money to the Internal Revenue Service (IRS) for delinquent federal taxes. The two SOR allegations addressing this liability assert debts of \$14,891 and \$4,231. Although Applicant claimed to have been making payments to the IRS, there is no record evidence of payments after February 1, 2012. In addition, the record contains evidence of a debt owed by Applicant's corporation to the IRS in the amount of \$145,000 due to insufficient quarterly tax payments. Although Applicant contended that this debt had been reduced and was included in the two debts alleged in the SOR, the Judge found that it was separate from them. This debt was not alleged as a security concern.

In addition, Applicant has a mortgage account that is delinquent in the amount of \$4,082. He purchased the home in 1984 for \$80,000, but he borrowed additional funds. In 2010, he applied for a loan modification. From December 2009 until November 2010, he accrued a total delinquency of over \$26,000. The lender approved the modification, and Applicant was current through November 2011. However, in December 2011 he applied for another loan modification, which was approved a year later. The record does not show the amount of the mortgage or of his new mortgage payment.

In December 2012, the creditor agreed to suspend foreclosure proceedings if Applicant made payments of \$1,802 a month for the following three months. The record contains evidence of a payment in January 2013.

The Judge's Analysis

Although he cleared Applicant on some of the SOR allegations, the Judge concluded that Applicant had not mitigated concerns arising from his IRS tax debt and his delinquent mortgage account. He noted that Applicant had not demonstrated payments to the IRS after February 2012, despite his having been employed since that time. He stated that Applicant had not made payments on his mortgage for most of 2010, although his income was apparently sufficient to have enabled him to do so.

The Judge concluded that Applicant's payments under his most recent loan modification constituted an insufficient track record to show responsible action in regard to his debts. The Judge stated that Applicant had not presented evidence of continuous contact with his creditors. He stated that Applicant's income during the previous several years was such that he should have been able to have made more than "minimal" progress toward debt resolution.

Discussion

Applicant challenges the Judge's statement that he had not made payments on his mortgage throughout most of 2010. We note evidence that, during 2010, Applicant accrued a mortgage delinquency of over \$26,000, which is consistent with the challenged statement. Even if the Judge had not made the statement, there is no reason to believe that the outcome of the case would have been different. The Judge's material findings of security concern are supported by substantial record evidence or constitute reasonable inferences from the evidence. *See, e.g.*, ISCR Case No. 11-10633 at 3 (App. Bd. Mar. 21, 2013).

Applicant cites to evidence he submitted after the hearing, as well as to his contention that he was making payments on his Federal tax debts and evidence regarding his most recent loan modification. The Judge discussed the evidence that Applicant has cited. He noted that some of Applicant's claims of repayment were not corroborated, which is consistent with the record before him. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record nor has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-03302 at 3 (App. Bd. Apr. 23, 2013).

Applicant challenges the Judge's treatment of the \$145,000 debt, arguing that it was not alleged in the SOR and does not establish security concerns. However, conduct not alleged in a SOR may be considered for a number of reasons, including evaluating an applicant's case for mitigation or rehabilitation, his credibility, or the whole-person factors. *See, e.g.*, ISCR Case No. 10-03430 at 4 (App. Bd. Sep. 19, 2011). The Judge's explicitly stated that he was considering this debt for these purposes. Decision at 3-4, note 5.

Despite Applicant's arguments to the contrary, 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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