

KEYWORD: Guideline F

DIGEST: The Board does not construe the Judge's discussion of Applicant's apparently inconsistent statements as a security concern additional to those cited in the SOR. Rather she considered the statements for purposes of evaluating Applicant's credibility. Such an evaluation is permissible. Adverse decision affirmed.

CASENO: 12-02859.a1

DATE: 05/16/2014

DATE: May 16, 2014

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In Re:)	
)	
-----)	ISCR Case No. 12-02859
)	
)	
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 September 10, 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 February 25, 2014, after the hearing, 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 failed to consider all of the evidence in the record; whether the whole-person analysis was erroneous; 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 has held a security clearance without incident or concern since 2008. He has worked for his current employer, a Defense contractor, since that year.

In 2006, Applicant and his wife bought a house in State A for \$299,000. They financed the purchase with primary and secondary mortgages, making no down payment. Applicant made about \$70,000 a year at the time, and his wife received about \$9,000 a year from her job. Applicant’s wife was pregnant at the time of the purchase, and she experienced complications requiring hospital care. As a consequence, she and Applicant acquired about \$7,000 in medical expenses. Applicant’s daughter was born prematurely, and his wife was not employed for four years after the birth. All of these circumstances affected the couple’s financial situation.

In his security clearance application (SCA), Applicant stated that he was having a difficult time making his mortgage payments. However, in his response to the SOR and at the hearing, Applicant stated that his mortgage payments were on-time and that he had cash reserves that would have enabled him to make mortgage payments for 18 months. Because of the economic downturn in 2008, Applicant’s house lost market value. Desiring to move to another state, he explored ways to address his situation. He was not approved for a loan modification. His lender offered him a forbearance plan agreement. However, that agreement would have required him to increase the amount of his monthly payments.

Applicant considered selling the house or renting it out, but he concluded that these options would entail financial loss. He consulted with an attorney, who advised him to do a “strategic default.” Decision at 3. Applicant did some research on a website that assists borrowers in this process. Applicant then decided to pursue strategic default, making his last mortgage payment in July 2010. The house was subsequently sold through foreclosure for less than Applicant owed on the loan. In State A, lenders are not permitted to attach a borrower’s other property in satisfaction of a deficiency judgment. Applicant submitted a letter from an attorney stating that, in the attorney’s opinion, State A would not permit a lawsuit by the lender against Applicant for the deficiency.

The delinquencies pertaining to the first and second mortgages are the only debts listed in the SOR. Applicant's financial statement shows that he has a monthly remainder of about \$1,000 after expenses. He states that he is debt free. Applicant's rental managers describe him as a person of good judgment who abides by rules and restrictions. Applicant's industrial security representative states that he is hardworking, honest, and trustworthy.

The Judge's Analysis

The Judge concluded that Applicant had not mitigated the concerns arising from his delinquent mortgage debts. She stated that his financial issues are recent and ongoing, insofar as the debts have not been paid. Acknowledging that Applicant's finances had been affected by circumstances beyond his control, she noted evidence of the steps that Applicant took to resolve his problems. She ultimately concluded, however, that Applicant's decision to walk away from his obligations, even though he had sufficient funds to make his payments, does not constitute a good faith effort to pay his debts. In the whole-person analysis, the Judge noted Applicant's favorable evidence, such as his education, his good work performance, and his good financial record (except for the delinquent loans). On the other hand, she noted his inconsistent statements about his financial condition at the time of the market crash. She also stated that State A's prohibition against collecting deficiency judgments in cases like Applicant's does not mitigate the security significance of a decision simply to forgo paying a legitimate debt despite having the means to do so. The Judge noted Applicant's five years of having held a clearance, which should have placed him on notice of the expectations attending that status. She said that Applicant should have considered factors other than mere financial benefit and that he had placed his own interest ahead of his duty to honor his financial obligations.

Discussion

Applicant cites to record evidence, such as his reliance on legal advice in deciding to walk away from his mortgage, his attorney's opinion that the deficiency judgments cannot be recovered, and his character references. He also cites to his years of having held a clearance without a security violation. All of this was evidence that the Judge was bound to consider, along with the balance of the record. The Judge made findings about the evidence Applicant has cited and discussed it in her analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10988 at 3 (App. Bd. Sep. 11, 2012). Security clearance determinations are predictive in nature, and it is foreseeable that persons with prior good records may nevertheless engage in conduct or undergo circumstances that raise doubts about their future judgment or reliability. *See, e.g.*, ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013).

Applicant cites to language at the end of his clearance interview summary to the effect that his financial circumstances do not impugn his willingness to pay his debts. This language summarizes Applicant's answers to the interviewer's questions. It does not express the interviewer's opinion as to Applicant's security worthiness. *See, e.g.*, ISCR Case No. 11-08118 at 3 (App. Bd. Aug. 12, 2013). Applicant contends that the Judge misinterpreted the statement in his SCA about his financial situation at the time of the economic downturn. He argues that this statement is not

actually inconsistent with the other statements cited by the Judge. He states that he was not aware that inconsistent statements could be a security concern. However, the Judge did not treat this apparent inconsistency as a security concern in addition to those raised in the SOR. Rather, she considered the statements in evaluating Applicant's credibility. *See, e.g.*, ISCR Case No. 11-00193 at 4 (App. Bd. Jan. 24, 2013) (Inconsistent statements can undermine an applicant's credibility). After examining the record, we conclude that the Judge's treatment of this matter is reasonable. We find no reason to believe that she extended undue weight to Applicant's inconsistent statements to the detriment of other record evidence.

Applicant makes various arguments which seem designed to suggest that nobody was hurt by his default. He refers to one creditor where the account is now shown as "foreclosure redeemed" and a second creditor where the account is shown as charged off. Neither of these actually are indicative of an absence of damage. As Appellant knows, the first creditor sold the property for \$80,000 less than the principal owed by Applicant at the time of the foreclosure. The second creditor's utilization of an accounting measure ("charge-off") would not make the creditor whole. *See, e.g.*, ISCR Case No. 08-11983 at 2, n. 1 (App. Bd. Jan. 28, 2011).

The Judge's whole-person analysis complies with the requirements of the Directive, in that she considered the totality of Applicant's circumstances in reaching her decision. *See, e.g.*, ISCR Case No. 08-09511 at 2 (App. Bd. Mar. 3, 2010). 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 Ra'anan
Michael 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