

KEYWORD: Guideline F

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence. Applicant bore the responsibility of presenting evidence in mitigation. The Judge’s weighing of the evidence is supportable. Adverse decision affirmed.

CASE NO: 12-03354.a1

DATE: 01/13/2015

DATE: January 13, 2015

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| In Re: |) | |
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| ----- |) | ISCR Case No. 12-03354 |
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| 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 March 27, 2014, 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 August 18, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 failed to consider all of the record evidence, whether the Judge’s decision ran contrary to the weight of the evidence, and

whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Defense contractor. He has held a security clearance since 2004 or 2005. Applicant's SOR alleges several delinquent debts arising from investment properties that Applicant purchased from 2004 to 2007. These properties were foreclosed in 2009, and, in that same years, Applicant filed for a Chapter 11 reorganization. Applicant owes state tax liens from 2010 to 2012.

In 2005, a friend approached Applicant about an investment plan that entailed the purchase of homes in another state to rehabilitate and rent. Applicant ultimately bought about 25 houses, taking about \$10,000 at closing for use in making them habitable. Applicant did not have a property manager in the state where the homes were located, although during the first few years he would travel once or twice a month to examine the homes. He stated that theft and vandalism against the properties were creating problems for him—things such as copper, air conditional units, and other things would disappear.

In 2008, the economy faltering, Applicant became delinquent with the mortgages. The next year he filed a Chapter 11 petition. He claims that everything connected with the properties would be resolved through this bankruptcy action, including the tax debts.

The Judge examined the bankruptcy filing and noted some differences between the facts alleged therein and Applicant's other statements about his finances. For example, in the bankruptcy filing he mentioned nothing about a friend having suggested the venture, asserting that he had decided to buy the homes after doing some market research. According to this document, Applicant established several corporations to borrow against equity and use the funds to purchase homes. Some of the homes were owned by Applicant and his wife, other by corporations.

In 2008, Applicant decided to develop "mixed use" properties in his home state. Decision at 3. He hired an architect to draw up plans, but he never received funding. The architect sued Applicant for \$100,000, which was included in the bankruptcy filing. At the same time, Applicant tried to develop a tract of land in his home state. He sought money from private investors, but ultimately he was sued for the payment of professional fees.

Applicant's Chapter 11 plan requires him to pay a quarterly fee and an annual payment to the trustee. Under the plan, which entails payment of \$60,000 over a five year period, all secured creditors will receive their money. As of the fourth quarter of 2013, Applicant had made only \$17,098 in payments. He is current with his payment plan, and expects to be discharged in 2015.

Applicant denied that he had state tax liens, claiming that no such liens appeared on his 2014 credit report. He did not receive a response from the state tax department when he tried to get in touch with them. Nevertheless, there is nothing in the record to show that the liens have been

resolved. Applicant asserts that the taxing authorities did not file a proof of claim, with the result that they are barred from recovery, but he provided no corroboration.

Applicant enjoys a good reputation in the community for honesty and responsibility. He has a total monthly income of \$12,200, with a net remainder of \$5,559. He stated at the hearing that he does not handle the household financial affairs.

The Judge's Analysis

The Judge concluded that Applicant's delinquent mortgage debts, delinquent tax debts, and bankruptcy raised concerns under Guideline F. In resolving these concerns against Applicant, she cited to his having purchased numerous out-of-state houses without any prior real estate experience, and with no contingency plan in the event that they were not fully rented. At a time when he was experiencing problems with his out-of-state homes, he tried to develop an in-state commercial enterprise. The poor economy was a circumstance outside his control, but Applicant did not show responsible action in regard to his debts. Although bankruptcy is a legal means for resolving debt, the Judge stated that she questioned his judgment and had doubts about his reliability.

In the whole-person analysis, the Judge stated that Applicant was not knowledgeable about real estate. He stopped making payments when he could no longer afford the costs but then undertook another commercial venture in his home state. She stated that Applicant's having bought numerous properties within a short period of time and continuing to buy despite financial difficulty impugns his judgment.

Discussion

Applicant argues that the Judge did not consider that his tax debts had been resolved. He also cites to evidence of his current financial stability. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-13626 at 3 (App. Bd. Nov. 7, 2013). The Judge noted evidence of Applicant's income and significant net remainder after expenses. She also made findings about his assertion that the state tax authorities had neglected to file proofs of claims in the bankruptcy action. However, her comment that there is no corroboration for this is consistent with the record. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record.

Applicant contends that the Judge did not properly weigh the record evidence, devoting too much attention to the period of time in which he experienced most of his problems. He believes that the entirety of his circumstances justify the grant of a clearance.

Judges make their decisions on the basis of the records before them. The Government's job in a DOHA proceeding is to produce substantial evidence regarding SOR allegations that have been controverted. Directive ¶ E3.1.14. Thereafter it is the applicant's responsibility to present evidence in mitigation, and the applicant bears the burden of persuasion that he or she should have a clearance. Directive ¶ E3.1.15. Applicant presented evidence, including witnesses who testified

as to his worthiness for a clearance. However, given the magnitude of Applicant's financial problems, the Judge's analysis of the record is supportable. If Applicant believed that his financial difficulties unreasonably distorted his record, it was his responsibility to present evidence that might correct any perceived misconceptions. As it stands, we find no reason to conclude that the Judge weighed the record in a manner that was arbitrary, capricious, or contrary to law.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The Judge's focus not only upon the extent to which Applicant's debts may be discharged through bankruptcy but upon the underlying circumstances of his financial problems is reasonable. *See, e.g.,* ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 2014). "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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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