

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge did not consider all of the evidence, in particular information provided in his Answer to the SOR about his having prioritized payment of non-SOR obligations owed to family members. A Judge is not expected to address everything in the record, which would be a practical impossibility. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASENO: 17-02841.a1

DATE: 03/07/2019

DATE: March 7, 2019

In Re: _____)
-----) ISCR Case No. 17-02841
)
Applicant for Security Clearance)
_____)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Patrick J. Hughes, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 25, 2017, 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 October 3, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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 and whether the Judge applied the wrong standard in evaluating Applicant's case, rendering his decision arbitrary, capricious, or contrary to law.

The Judge's Findings of Fact and Analysis

Applicant's SOR lists several delinquent credit card accounts and three judgments, two of which he has paid. Applicant operated a business from 2006 to 2016, which did not succeed, especially in 2014 and later. He had difficulty paying bills. Applicant enrolled in debt relief firms. He was not able to make the required payments under the earlier one, and he provided no information about the status of the other. Aside from the two judgments that he has paid, Applicant submitted no evidence of payment on his SOR debts. He presented no evidence of a budget or of his spending practices.

Given the extent of Applicant's remaining debts, it is likely that his financial problems will continue into the future. Although his business failure was a circumstance beyond his control, Applicant has not demonstrated responsible action in regard to his delinquent debts. He has satisfied only two of his SOR debts, even though he has been fully employed since 2016. He has never had financial counseling, and, though his debt programs refer to credit counseling, there is no evidence as to what this consisted of. Applicant has not presented meaningful evidence of debt resolution. He is not required to have paid off all debts in the SOR, but he should have a plan to pay his debts, supported by evidence that he is implementing that plan.

Discussion

Applicant has submitted exhibits which were not part of the record. The Board may not consider new evidence. Directive ¶ E3.1.29.

Applicant contends that the Judge did not consider all of the evidence, in particular information provided in his Answer to the SOR about his having prioritized payment of non-SOR obligations owed to family members. A Judge is not expected to address everything in the record, which would be a practical impossibility. *See, e.g.*, ISCR Case No. 16-02243 at 3 (App. Bd. Nov. 30, 2018). Applicant has not rebutted the presumption that the Judge considered all of the evidence

in the record. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019). Applicant contends that the Judge held him to an impossibly high standard, in that he stated that Applicant's problems would likely extend well into the future. He argues that no one can be expected to remain debt-free. However, we construe the challenged statement to mean that, despite having held employment since 2016, Applicant has not established a track record of debt payment. *See, e.g.*, ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). In fact, the Judge acknowledged explicitly that an applicant is not required to pay off all debts in order to receive a clearance. The Judge did not employ the wrong standard in resolving Applicant's case for mitigation. *Compare, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 27, 2017) "...[T]he Judge could reasonably conclude that Applicant's 'financial issues are recent and ongoing'..."

Applicant cites a document the Board sends to the parties in all its cases. The document mentions that the chairperson or designee may vary the terms of the document in certain circumstances. The document does not say that the provisions of the Directive will be varied. Indeed, the Chairperson has no such authority.

The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board