

KEYWORD: Guideline F; Guideline J

DIGEST: Applicant's failure to corroborate his testimony supports the Judge's conclusion that he had not met his burden of persuasion. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 17-02009.al

DATE: 04/25/2019

DATE: April 25, 2019

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 6, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On February 7, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline J are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

The Judge made the following findings that are pertinent to the issue raised on appeal: from 2007 to 2016, Applicant acquired seven delinquent debts, totaling over \$14,000. These were for medical expenses and a consumer account. Applicant attributed the medical debts to his wife’s illness while he was deployed overseas. His wife passed away, and he does not know if she ever submitted claims to the couple’s medical insurer. Applicant made no follow-up regarding the extent to which these debts were covered by insurance. Applicant purchased a home with the proceeds from his wife’s life insurance policy, applying none of them toward resolving his debts. He provided no evidence that he had lodged disputes of these debts, nor did he present evidence of efforts to contact his creditors or the credit repair firm that he had hired. He provided no “helpful documentation” of steps to resolve his SOR debts. Applicant enjoys an excellent reputation for character, reliability, and trustworthiness. Decision at 4.

Though noting Applicant’s wife’s death, the Judge concluded that he had not demonstrated responsible action in regard to the debts listed in the SOR. He also concluded that Applicant had not shown that he initiated or is adhering to a good-faith effort to pay his debts. Although his debts are not longer listed on his credit report, this does not demonstrate that they have actually been resolved in such a way as to mitigate the concerns arising from them. All in all, Applicant has not demonstrated a meaningful track record of debt resolution.

Discussion

Applicant cites to record evidence that he contends that the Judge did not consider or that he did not properly weigh. This includes the circumstances under which his debts arose, his having hired a firm to address his debts, his contention that the medical debts should be paid by his insurer, etc. The Judge made findings about these things. Applicant’s failure to corroborate his testimony supports the Judge’s conclusion that he had not met his burden of persuasion. *See, e.g.*, ISCR Case No. 15-07062 at 2 (App. Bd. Nov. 21, 2017). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he shown that the Judge weighed the

evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019).

We give due consideration to the Hearing Office case that Applicant has cited in support of his effort to obtain a favorable decision. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. Each case must be decided on its own merits. *See, e.g.*, ISCR Case No. 17-03363 at 3 (App. Bd. Nov. 29, 2018).

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 Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board