

KEYWORD: Guideline F

DIGEST: Applicant contends that, considering his credibility and integrity, “there is no reasonable basis for concluding that allowing [his] access to classified information poses an imminent threat to the national interest.” Appeal Brief at 6-7, citing Directive ¶ 6.4. Applicant’s reliance on ¶ 6.4, which applies to the temporary suspension of a previously adjudicated security clearance pending a final clearance decision, is misplaced. Regarding this issue, we first note that Applicant’s security clearance was not suspended under ¶ 6.4. Second, the Judge’s decision in this case is an integral part of and, depending on the circumstances, could constitute the final clearance decision. Third, the “imminent threat to the national security” standard is for use by an appropriate DoD official in reviewing a proposed security clearance suspension and not for use by Judges in adjudicating security clearance eligibility. DOHA Judges apply the “clearly consistent with national interest” standard in security clearance adjudications. *See* Section 2 of Exec. Order No. 10865; the procedures laid out in detail in Enclosures 2 and 3 of the Directive; and *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also*, ISCR Case No. 14-05238 at 2 (App. Bd. Jan. 13, 2016) for the proposition that ¶ 6.4 is limited in scope and that as a general matter the Government does not have to prove a ““clear and present danger’ to national security” before it can deny an applicant a clearance. Moreover, as provided in Directive, Encl. 2, App. A, ¶ 2(b), “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” Adverse decision affirmed.

CASENO: 18-00695.a1

DATE: 09/20/2019

DATE: September 20, 2019

In Re: _____)
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Applicant for Security Clearance)
ISCR Case No. 18-00695)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Edward O. Lear, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 4, 2018, 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 May 7, 2019, after the hearing, Administrative Judge Richard A. Cefola denied Applicant's request for a security clearance. Applicant submitted a Motion for Reconsideration that the Judge granted. On July 2, 2019, after receipt of additional evidence, the Judge again denied Applicant's request for a clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR listed 18 allegations of financial deficiencies. These include that Applicant failed to file his state income tax return for 2014 prior to the statutory deadline; that he failed to pay his state incomes taxes for 2011-2014 as required; that he failed to file his Federal income tax returns for 2011-2016 prior to the statutory deadlines; that he owed delinquent income taxes to the Federal Government for 2011-2015 totaling about \$39,700; and that he had ten other delinquent debt totaling about \$2,570. In responding to the SOR, Applicant admitted each allegation. In the Decision on Reconsideration, the Judge found in favor of Applicant on 15 SOR allegations and against him on three delinquent debts totaling about \$1,120.

Applicant's appeal brief contains documents and assertions about the payment of certain debts that were not presented to the Judge for consideration. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends that, considering his credibility and integrity, “there is no reasonable basis for concluding that allowing [his] access to classified information poses an **imminent** threat to the national interest.” Appeal Brief at 6-7, citing Directive ¶ 6.4. [Emphasis in Appeal Brief.] Applicant’s reliance on ¶ 6.4, which applies to the temporary suspension of a previously adjudicated

security clearance pending a final clearance decision, is misplaced. Regarding this issue, we first note that Applicant’s security clearance was not suspended under ¶ 6.4. Second, the Judge’s decision in this case is an integral part of and, depending on the circumstances, could constitute the final clearance decision.¹ Third, the “imminent threat to the national security” standard is for use by an appropriate DoD official in reviewing a proposed security clearance suspension and not for use by Judges in adjudicating security clearance eligibility. DOHA Judges apply the “clearly consistent with national interest” standard in security clearance adjudications. *See* Section 2 of Exec. Order No. 10865; the procedures laid out in detail in Enclosures 2 and 3 of the Directive; and *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also*, ISCR Case No. 14-05238 at 2 (App. Bd. Jan. 13, 2016) for the proposition that ¶ 6.4 is limited in scope and that as a general matter the Government does not have to prove a “clear and present danger” to national security before it can deny an applicant a clearance. Moreover, as provided in Directive, Encl. 2, App. A, ¶ 2(b), “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Applicant also argues that the Judge did not adequately analyze the potential disqualifying and mitigating conditions. In doing so, he highlights, for example, the actions he has taken to resolve his financial problems. His arguments, however, are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3 (App. Bd. Aug. 30, 2018). We note that the Judge’s key conclusions – that Applicant has a long history of financial problems, that he has not resolved all of the alleged debts, and that he has not demonstrated that future financial problems are unlikely – are sustainable on the record.

As we have previously stated, the Judge’s decision must be written in a manner that allows the parties and the Board to discern what findings the Judge is making and what conclusions he or she is reaching. *See, e.g.*, ISCR Case No. 16-02536 at 5 (App. Bd. Aug. 23, 2018). Based on our review, the Judge’s decision in this case creates some ambiguity. As noted above, the Judge found in favor of Applicant on 15 SOR allegations and against him on three debts totaling about \$1,120. In general, a Judge’s favorable finding on an SOR allegation tends to indicate that he or she concluded the allegation no longer raises a security concern. In this case, the Judge specifically concluded that Applicant had a history of financial problems and failed to establish that those problems are unlikely to recur. The extent to which the Judge relied on the favorable SOR findings to reach those conclusions is unknown.² While Applicant notes in his appeal brief that the Judge only found against him on three allegations totaling less than \$1,200, he did not specifically claim those unfavorable findings standing alone were insufficient to raise security concerns. As discussed

¹ *See*, Directive ¶ E3.1.36. Because Applicant appealed the Judge’s decision, our decision constitutes the final clearance decision.

² Even if debts have been paid, removed, rendered uncollectable by operations of law, or are otherwise resolved, a Judge may still consider the underlying circumstances of an applicant’s financial difficulties in evaluating whether he or she has demonstrated good judgment and reliability. *See, e.g.*, ISCR Case No. 17-00192 at 2 (App. Bd. Sep. 21, 2018).

above, we concluded the record when viewed as a whole does support the Judge's adverse conclusions. Given these circumstances, we conclude that no benefit would be gained by remanding the decision to the Judge to clarify the extent to which he may have relied on the favorable findings in rendering his adverse decision.

Applicant has failed to demonstrate harmful error below. Accordingly, the Board affirms the Judge's adverse security clearance decision.

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; James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board