

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge erred in admitting four credit reports over his objection. He argues that the Government failed to provide evidence attesting to the authenticity of these documents. We examine a Judge’s evidentiary rulings to determine if they are consistent with the Directive and if they are arbitrary, capricious, or contrary to law. Credit reports are generally admissible as part of the Government’s case in chief. ISCR Case No. 07-08925 at 2-3 (App. Bd. Sep. 15, 2018) has an in-depth discussion of the admissibility of credit reports in DOHA proceedings. A credit report qualifies as a record compiled or created in the regular course of business and, therefore, is admissible without an authenticating witness. Directive ¶ E3.1.20. There is nothing on the face of the challenged documents to suggest that they are other than what they purport to be, and, contrary to Applicant’s arguments, their meaning can reasonably be ascertained. The Judge’s decision to admit Applicant’s credit reports was consistent with the Directive and was not arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 18-00552.a1

DATE: 01/18/2019

DATE: January 18, 2019

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In Re:)	
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-----)	ISCR Case No. 18-00552
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Jessica R. K. Dorman, Esq.

Lance R. Claery, Esq

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 16, 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 September 18, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 erred in admitting his credit reports 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’s SOR alleged that he had filed for bankruptcy twice, under Chapter 7 in 2015 and under Chapter 13 in 2017. The bankruptcy documents included in the case file show that he had several debts, and these debts are confirmed by the contents of his credit reports. The reasons for the financial problems that underlay his bankruptcy filings include Applicant having provided financial support for his father, who suffered from dementia. He also helped pay for his younger sister’s private school. In assuming these financial responsibilities, Applicant took out a home equity line of credit, and he used credit cards as well. During the course of his financial difficulties, Applicant took a trip to Europe for a vacation.

As stated above, Applicant filed for Chapter 7 bankruptcy in 2015, and most of his debts were discharged in the middle of that year. Some debts, however, were not discharged—his automobile loan, his student loans, and his mortgage. Applicant received financial counseling and debtor education during the course of his bankruptcy action. After his bankruptcy discharge, Applicant was unemployed for three to four months, and he fell behind on his expenses. Accordingly, he filed for Chapter 13 bankruptcy protection in mid-2017. Applicant testified that he is making payments under this plan. Applicant believes that his family took advantage of him over the years by permitting him to pay family expenses without providing any assistance of their own. His credit history shows that he had financial difficulties even before he undertook to provide financial assistance to his father. A 2009 credit report shows numerous collection and charge-off accounts.

Applicant’s three witnesses, all of whom have held security clearances at some point, attest to his good judgment, reliability and trustworthiness. These witnesses recommend Applicant for a security clearance.

The Judge’s Analysis

The Judge found Applicant to be a “compassionate and kind-hearted man” who had made bad financial decisions in taking on responsibility for his father’s expenses. Decision at 5. She stated that, instead of paying his own bills, he paid those of family members, with the result that he

has filed for bankruptcy protection twice in the past few years. Although he realizes that his other family members took advantage of him, Applicant, by his own admission, cannot guarantee that it will not happen again. The Judge concluded that Applicant's financial difficulties raise unresolved questions about his current reliability, trustworthiness, or good judgment.

Discussion

Applicant contends that the Judge erred in admitting four credit reports over his objection. He argues that the Government failed to provide evidence attesting to the authenticity of these documents. We examine a Judge's evidentiary rulings to determine if they are consistent with the Directive and if they are arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-05047 at 4 (App. Bd. Nov. 8, 2017). Credit reports are generally admissible as part of the Government's case in chief. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Also, ISCR Case No. 07-08925 at 2-3 (App. Bd. Sep. 15, 2018) has an in-depth discussion of the admissibility of credit reports in DOHA proceedings. A credit report qualifies as a record compiled or created in the regular course of business and, therefore, is admissible without an authenticating witness. Directive ¶ E3.1.20. There is nothing on the face of the challenged documents to suggest that they are other than what they purport to be, and, contrary to Applicant's arguments, their meaning can reasonably be ascertained.¹ The Judge's decision to admit Applicant's credit reports was consistent with the Directive and was not arbitrary, capricious, or contrary to law.

Applicant challenges the Judge's analysis of his case for mitigation. In support of his argument, he has attached to his brief information from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant contends that the Judge erred by considering evidence of non-alleged conduct, such as his relatively old debts and his European trip. We do not find this argument to be persuasive. In the first place, debts that were included in Applicant's bankruptcy actions are within the scope of the SOR, even if they were not independently alleged. Moreover, conduct not alleged or otherwise fairly embraced by the SOR may be relevant for other purposes: making a credibility determination; evaluating the applicant's case for extenuation or mitigation; evaluating the extent to which the applicant has demonstrated rehabilitation; and in performing a whole-person analysis. *See, e.g.*, ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017). The Judge addressed Applicant's older debts and his trip in the context of his case for mitigation, specifically in evaluating his claim that his problems resulted from his financial assistance to his father. Insofar as this claim was a principle part of Applicant's case for mitigation, we find no error in the Judge's having considered this evidence.²

¹We also note that Federal Rules of Evidence 901(b) provides: "[b]y way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule: ... (4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances."

²Applicant states that he was placed on notice only of the two bankruptcy actions. Appeal Brief at 9. However, as stated above, the Judge properly considered evidence of Applicant's debts, even though they were not specifically alleged. Applicant was provided copies of the Government's evidence prior to the hearing. Tr. at 16. We find no reason to conclude that Applicant was subjected to unfair surprise in the evidence adduced at the hearing or that he was

The balance of Applicant’s argument is, in effect, a disagreement with the Judge’s weighing of the evidence. However, an ability to argue for an alternative interpretation of the record is 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. 17-02463 at 2 (App. Bd. Sep. 10, 2018). Given evidence of Applicant’s two bankruptcy filings over a course of two years, the financial problems underlying those filings, and a paucity of evidence to show that Applicant has put these problems behind him, the Judge did not err in concluding that Applicant had failed to meet his burden of persuasion regarding mitigation.

Applicant has identified no harmful error in the Decision. 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.”

otherwise denied the due process afforded by the Directive.

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