

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge erred by “doubling” the correct amount of his assets. The Judge found that Applicant had “a stocks and bonds investment portfolio and 401(k) account statement reflecting that [he] has assets valued at well over \$2 million, plus other bank account and IRA statements showing his substantial net worth.” In his appeal brief, Applicant challenges that finding by pointing to his testimony that he had about \$1.2 million in stocks and bonds. We note that, on a Personal Financial Statement, Applicant listed his total assets as being over \$1,742,000, which included real estate, stocks and bonds, and other assets. Even though the Judge may have miscalculated Applicant’s total assets, this was a harmless error because it did not likely affect the outcome of the case. Adverse decision affirmed.

CASENO: 18-02302.a1

DATE: 06/26/2019

DATE: June 26, 2019

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In Re:)	
-----)	ISCR Case No. 18-02302
)	
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 October 19, 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 March 29, 2019, after the hearing, Administrative Judge Robert J. Kilmartin 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 his findings of fact and conclusions 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, who is 52 years old, has worked for a Federal contractor for 22 years. His wife is deceased, and his two adult children reside with him. He has held a security clearance without any incident for over 20 years.

The SOR alleged four delinquent debts. The Judge found for Applicant on three of those debts and against him on a charged-off second mortgage. In 2006, Applicant co-invested with others in two homes and also purchased a third home for himself. After the real-estate market collapsed, the two investment homes were sold for losses. One loss was a few hundred dollars, while the other was about \$15,000.

Applicant tried unsuccessfully to dispose of the third home through a short sale. He struggled to make the mortgage payments, even obtaining a home-equity line of credit of about \$98,000 to make those payments. His attempts to sell the home were unsuccessful. Eventually, he defaulted on the first and second mortgages totaling about \$300,000. In 2014, the home was foreclosed and sold at auction to a loan-servicing company for \$120,000.

Shortly after the foreclosure sale, Applicant received a demand for about \$230,000 from Creditor X, who was not the original lender of the two mortgages. Applicant assumed the amount was incorrect and discarded the demand. “He was confused and thought that ‘charged-off’ on his credit report meant forgiven. He also thought that aged-off his credit report accounts were closed.” Decision at 3. He did not contact Creditor X or the original lender from about 2014 until late 2018 to try to resolve this deficiency. He acknowledged he should have done more.

After his background interview in mid-2018, Applicant realized Creditor X was a collection agent for the original lender of the mortgages or its successor creditor. He contacted Creditor X after he received the SOR. In early 2019, he was able to settle the first mortgage for \$33,000. He “only recently started communicating with” the original lender to resolve the second mortgage, which was charged off for about \$83,000, and provided a packet of correspondence showing his efforts to resolve it. Decision at 3.

Applicant has completed some financial counseling. His biweekly gross pay is about \$5,400. He has assets valued over \$2 million.

The Judge's Analysis

Applicant experienced conditions beyond his control, such as the death of his spouse in 2017 and the real-estate market collapse in 2008, but he did not act responsibly under the circumstances. “He testified that he thought charged-off meant forgiven, and that if delinquent debts aged off his credit reports, they were closed. I did not find that testimony to be credible.” Decision at 6. He has substantial assets available to pay his delinquent debts. He deliberately ignored creditors between 2014 and 2018, while amassing a large investment portfolio. The second mortgage still has not been satisfied.

Discussion

Applicant contends that Judge erred in four of his findings and conclusions. We examine finding of fact to determine whether they are supported by substantial evidence, *i.e.*, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018).

(1) Applicant contends that the Judge erred in a finding regarding the timing of his efforts to resolve the second mortgage. On Page 3 of the Decision, the Judge found that, “[a]fter his clearance interview in June 2018, Applicant began to put the pieces together and realized that [Creditor X] was a collection agent for [the original mortgage lender] or its successor creditors.” Applicant argues that he did not determine that Creditor X was the holder of the second mortgage until February 2019, which explains why he did not take any earlier action. In essence, he is contending the Judge used an eight-month period of inaction (*i.e.*, the period between Applicant’s background interview in June 2018 and his claimed date for identifying the creditor in February 2019) to conclude he did not act responsibly in addressing the second mortgage. He categorizes the eight-month period as an “error.” We do not find Applicant’s argument persuasive. In this regard, it should be noted that we do not consider individual sentences in a decision in isolation. Rather, we look at each aspect of a decision in light of the whole and interpret individual portions in their proper context. *See, e.g.*, ISCR Case No. 11-13664 at 5 (App. Bd. Aug. 15, 2013). In the decision, the Judge does not mention that eight-month period in his analysis. In fact, there is scant reason to believe that specific time period was an independent factor in the Judge’s decision. Instead, in examining whether Applicant acted responsibly in addressing the second mortgage, the Judge focused on the four-year period from when Applicant received the demand for the balance due on both foreclosed mortgages in 2014 (which he discarded without conducting any inquiry) to when he eventually contacted the creditor in late 2018 and early 2019. Based on our review of the record, the Applicant has failed to show that the eight-month period standing alone had any impact on the Judge’s decision.

(2) Applicant contends that the Judge erred by “doubling” the correct amount of his assets. Appeal Brief at 8. On Page 3 of the Decision, the Judge found that Applicant had “a stocks and bonds investment portfolio and 401(k) account statement reflecting that [he] has assets valued at well over \$2 million, plus other bank account and IRA statements showing his substantial net worth.” In his appeal brief, Applicant challenges that finding by pointing to his testimony (Tr. at 23) that he had about \$1.2 million in stocks and bonds. We note that, on a Personal Financial Statement submitted with his SOR response, Applicant listed his total assets as being over \$1,742,000, which included real estate, stocks and bonds, and other assets. Even though the Judge may have miscalculated Applicant’s total assets, this was a harmless error because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). The key point is that Applicant had substantial assets to resolve the second mortgage but had not done so by the close of the record.

(3) Applicant challenges the Judge’s credibility determination. In doing so, he contends the Judge erred in concluding that “[he] testified . . . that if delinquent debts aged off his credit report, they were closed.” Appeal Brief at 9, quoting from Decision at 6. He asserts that nowhere in the record can such testimony be found, and he also points to a portion of his testimony (Tr. at 73) in which he indicated that he was unaware debts age off credit reports. He argues that the Judge’s error regarding his position about the aging off of debts from credit reports was a significant factor that contributed to the Judge making a flawed credibility determination. We do not find this assignment of error convincing. Of note, Applicant’s appeal brief quotes from only portions of the Judge’s decision and the transcript that are pertinent to his claim. In determining whether the Judge committed harmful error, we will examine the record in its entirety. As quoted above, the full text of the Judge’s sentence at issue reads as follows: “[Applicant] testified that he thought charged-off meant forgiven, and that if delinquent debts aged off his credit reports, they were closed.” Decision at 6. At the hearing, Applicant testified in pertinent part as follows:

[Applicant]: . . . And [a debt] was listed as charged off, which I didn’t know what charged off meant. I thought charged off meant basically relief from debt, so it was forgiven.” [Tr. at 60.]

* * *

[Judge]: Okay. So, if I’m understanding you correctly, this first came to your attention -- you thought it might have been waived or forgiven or something?

[Applicant]: Yes, Your Honor. [Tr. at 61.]

* * *

[Applicant]: . . . So, when both of them [debts] disappeared off of my credit report, that is when I thought, well, it’s all resolved.

[Judge]: Well, you understand that debts age off your credit report, like after --

[Applicant]: Actually, I didn't know that. I found that out after talking to him, after talking to the investigator -- [Tr. at 73.]

Based on a review of the record, Applicant's claim essentially boils down to a challenge to the Judge's use of the phrase "aged off" in the sentence at issue. We do not find Applicant's claim to be of such significance as to warrant any corrective action. Furthermore, we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Applicant has not provided us a sufficient reason to disturb that determination.

(4) Applicant challenges the Judge's conclusion that he "deliberately ignored creditors and collection agents for the period between 2014 and 2018." Appeal Brief at 11, quoting from Decision at 6. He argues that there is no record evidence that he ignored creditors during that time period. Under the Directive, however, Applicant had the burden to present witnesses and other evidence to rebut, explain, extenuate, or mitigate proven security concerns. *See* Directive ¶ E3.1.15. Applicant has not pointed to any evidence that shows he acted responsibly in addressing the two foreclosed mortgages during that time period. We note he resolved the primary foreclosed mortgage in February 2019, shortly before the hearing. From our review of the record, the Judge's conclusion that Applicant ignored his creditors from 2014 to 2018 was a reasonable inference based on the evidence that was presented. We conclude the Judge committed no error in reaching the challenged conclusion.

Applicant further contends that the Judge's decision is not supported by the weight of the evidence. In doing so, he argues the decision was skewed due to the purported errors discussed above, and he claims the Judge ignored the actions he has taken to resolve the foreclosed mortgages since November 2018. He also notes that he testified that he made efforts to resolve the debts in the summer of 2018. In essence, he is arguing that he acted responsibly in addressing the foreclosed mortgages. His arguments, however, are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.,* ISCR Case No. 16-00844 at 2 (App. Bd. Jul. 25, 2017). Additionally, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has failed to show the Judge committed any harmful error. The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board