

KEYWORD: Guideline F

DIGEST: Although the Judge apparently erred in a finding and conclusion pertaining to the debt in SOR ¶ 1.i, these errors were also harmless. The key point here is that Applicant failed to submit proof showing the alleged debts were either resolved or being resolved. Adverse decision affirmed.

CASENO: 19-00074.a1

DATE: 11/13/2019

DATE: November 13, 2019

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In Re:)	
)	
-----)	ISCR Case No. 19-00074
)	
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 April 25, 2019, 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 September 9, 2019, after considering the record, 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 in her appeal: whether the Judge erred in her findings of fact 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 and Analysis

Applicant, who is in her 40s, began working for her current employer, a defense contractor, in early 2019. She is a military retiree and held a security clearance during her military career without incident. She is married with a minor child.

The SOR alleged that Applicant had 14 delinquent debts totaling about \$22,000. In responding to the SOR, she admitted each allegation. She attributed those debts to various events that included a prior marriage in which her husband had bad credit and the marital debts were placed in her name. When they divorced, she was left with approximately \$20,000 in debt. After her divorce, she became pregnant and had a premature child. The most significant financial setback occurred when her father was diagnosed with a serious illness that prompted Applicant to request a humanitarian reassignment, which resulted in moving and child care expenses. She also assisted her father financially. At some point, she married again and attempted to maintain two households in different states. When she rented her house, the tenants failed to pay the rent and utility bills. She and her husband also incurred medical problems that interfered with their ability to work.

Applicant sought credit counseling, but cancelled that program as a result of contractual issues. She noted that most of the debts were included in the credit counseling program. For four of those debts, she indicated that she intended to resolve them as soon as possible. For four other debts, she stated she either paid or is currently paying them, but provided no proof. She disputes one debt but provided no documentation of the dispute. She wanted to dispute another debt but has now decided to pay it.

Applicant noted that she has paid other debts not listed in the SOR. She prepared a budget that includes each of the delinquent debts without submitting any proof of those payments. She believes that she will be able to have all of the debts paid within one year if her security clearance is granted. Professional associates and friends attest to her integrity and describe her as reliable and trustworthy.

Applicant’s financial problems were partially caused by circumstances beyond her control. However, she does not explain specifically what she is doing to resolve them. She has not provided proof of payment, payment plans, or letters from the creditors that confirm the debts are being

resolved. It cannot be determined that her debts are under control. There is no clear evidence that she acted responsibly under the circumstances. Her inactions raise unmitigated security concerns.

Discussion

Applicant's appeal brief contains documents and assertions that are not included in the record. She argues such information is not new evidence but rather it is supplemental information that was not available at the time she responded to Department Counsel's File of Relevant Material (FORM) and it substantiates facts previously provided. This argument lacks merit. Information not previously submitted to the Judge for consideration constitutes "new evidence" that the Appeal Board cannot consider. *See, e.g.*, ISCR Case No. 18-00287 at 2, n.1 (App. Bd. Apr. 3, 2019).

Applicant contends that the Judge erred in finding that she had 14 delinquent debts when the SOR only listed ten debts. This discrepancy appears to have been a typographical error. In the decision, the Judge discussed each of the ten alleged debts individually in the order they appeared on the SOR. Also on page 4, she noted that Applicant was "making payments on the ten debts listed in the SOR." The decision reflects the Judge knew the specific nature and extent of the alleged debts. Although the Judge erred by initially indicating the SOR contained 14 debts, this was a harmless error because it did not likely affect the outcome of the decision. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

Applicant challenges the Judge's finding that "Applicant claims that she paid [the debt in SOR ¶ 1.i] off in February 2018, but provides nothing more" (Appeal Brief at 4, quoting from Decision at 4) and challenges a related conclusion that "Applicant states that one of the debts in the SOR has been paid off and the others remain owing" (Appeal Brief at 4, quoting from Decision at 7). Applicant contends she never made that purported statement. It appears the Judge may have confused the debt in SOR ¶ 1.i with a non-alleged debt of a similar amount that Applicant told an investigator was paid in February 2018. FORM Item 3. Although the Judge apparently erred in a finding and conclusion pertaining to the debt in SOR ¶ 1.i, these errors were also harmless. The key point here is that Applicant failed to submit proof showing the alleged debts were either resolved or being resolved.

Applicant argues the Judge erred by indicating Applicant submitted only three letters of recommendation. In the findings of fact, the Judge indicated there were "[l]etters of recommendation from professional associates and friends[.]" Decision at 4. However, at the end of the paragraph discussing the letters of recommendation, the Judge referenced only three exhibits as support for her findings. Based on that reference, Applicant is contending the Judge only considered three of the letters of recommendation, while six were submitted. We do not find this argument persuasive. Judges have broad latitude and discretion in way they write their decisions. *See, e.g.*, ISCR Case No. 09-02752 at 6 (App. Bd. Apr. 6, 2010). There is no requirement that the Judge cite every exhibit or piece of evidence that supports a finding of fact. Moreover, there is a rebuttable presumption that the Judge considered all the evidence in a case unless the record clearly demonstrates otherwise. *See, e.g.*, ISCR Case No. 08-01616 at 2 (App. Bd. Jul. 7, 2009). In this case, Applicant has failed to rebut that presumption.

Applicant notes that denial of her security clearance would affect her ability to pay her debts. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013). She also highlights a sentence in an investigator's report, that states, "There is no reason for anyone to question the subject's ability or willingness to repay her debts or live within her means, subject's current financial status is very good." Appeal Brief at 10, quoting from FORM Item 3. The quoted sentence summarizes Applicant's answers to the interviewer. It does not constitute the interviewer's opinion as to Applicant's financial situation or security worthiness. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015). In any event, even if an investigator provided such an opinion it would not bind the DoD in its evaluation of an applicant's case. Applicant further contends that previously her security clearance was mistakenly adjudicated as a "loss of jurisdiction," which later prompted the current adjudication. This does not establish any error in the Judge's decision. The Government has the right to examine an applicant's security clearance eligibility in light of recent conduct or circumstances having negative security significance. *See, e.g.*, ISCR Case No. 04-01961 at 4 (App. Bd. Jul. 12, 2007).

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. She asserts, for example, that the record evidence reflects payments toward non-alleged debts, that she chose to continue paying debts instead of hiring an attorney to represent her in this security clearance adjudication, and that the evidence shows a history of willingness to satisfy her debts. Her arguments are not sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

Applicant failed to establish that 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* at 528. *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