KEYWORD: Guideline F; Guideline E

DIGEST: At a hearing, a Judge may direct an applicant to answer relevant questions. Applicant's husband did testify after Applicant at the hearing. The Judge explained to Applicant that she could just say she does not know the answer when that is the case but that he would not allow her husband to testify through her. Applicant's contention that the Judge instructed her to answer questions, instead of letting her husband answer them, fails to establish any error. Adverse decision is affirmed.

CASE NO: 19-01155.a1

DATE: 01/24/2020

DATE: January 24, 2020

In Re:	)	
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Applicant for Security Clearance	)	

APPEAL BOARD DECISION

<u>APPEARANCES</u>

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 May 3, 2019, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 15, 2019, after the hearing, Administrative Judge Gregg A. Cervi 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 E have not been raised as an issue on appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is in her late 50s, is an employee of a defense contractor. She and her husband have inconsistent work histories. Her husband was injured while serving in the military and in a civilian job and receives disability benefits from the Department of Veterans Affairs and Social Security. He also had a ride-share business that failed. She expended time and money to assist her elderly mother and also experienced a five-month period of unemployment in 2015. They have no children.

Under Guideline F, the SOR alleges that Applicant filed Chapter 7 bankruptcy in 2000 and received a discharge in 2001; filed Chapter 13 bankruptcy in 2007 and received a discharge in 2014; filed Chapter 13 bankruptcy in 2016 that was converted to a Chapter 7 bankruptcy and received a discharge in 2016; and had a vehicle loan collection account for about $22,000. She admitted the bankruptcy allegations but denied the vehicle loan allegation.

The first bankruptcy discharged about $20,000 in consumer debt, the second bankruptcy discharged about $141,866 in unsecured claims without payment, and the third bankruptcy discharged about $241,800 in debts and also resulted in the abandonment of about $80,000 in assets. The alleged vehicle loan became delinquent in 2016. In late 2016, she began making agreed monthly payments of $530 on the vehicle loan but fell behind on them when she began making partial, irregular payments starting in July 2017. In May 2019, she made a payment of about $7,200 to bring the account current and resumed the monthly payments.

In 2019, Applicant and her husband took a vacation and entered into a timeshare agreement. They later learned that the timeshare had a negative effect on their credit and generated unexpected charges. They drafted a letter to the timeshare company to be relieved of their obligation, but the current status of the account and whether the letter was delivered is unknown.

The Judge's Analysis

Applicant experienced conditions beyond her control, but failed to establish a track record of making responsible financial decisions. Some mitigating conditions are partially applicable but are not conclusive. The evidence does not establish convincingly that Applicant will not incur future delinquencies or that she has the intent and means to resolve her debts. Her financial history continues to cast doubt on her current reliability, trustworthiness, and good judgment.

Discussion

In her appeal brief, Applicant states:

> When my husband and I sat before the Administrative Judge (Judge) he was designated as my [personal] representative. Opposing counsel stated that he wanted to ask me a few clarifying questions. . . . I kept telling the judge that the questions he was asking were to be answered by my husband. When my husband would attempt to give the specific information as to dates, amounts, and specific facts about the case the judge would tell him that he could not help me answer the question. So, there were some issues that did not reflect the true facts of the case. [Appeal Brief at 1.]

Directive ¶ 6.2 provides that "[a]n applicant is required to give . . . full, frank, and truthful answers to relevant and material questions needed by DOHA to reach a clearance decision" and refusal or failure to do so may prevent DOHA from making a clearance decision. At a hearing, a Judge may direct an applicant to answer relevant questions. Applicant's husband did testify after Applicant at the hearing. The Judge explained to Applicant that she could just say she does not know the answer when that is the case but that he would not allow her husband to testify through her. Applicant's contention that the Judge instructed her to answer questions, instead of letting her husband answer them, fails to establish any error.

Applicant's appeal brief contains assertions and a document that are not contained in the record. The Appeal Board is prohibited from considering new evidence on appeal. Directive E3.1.29.

Applicant contends the Judge erred in finding that she had $28,000 in non-alleged student loans. She states that her student loans total $2,800. Credit reports in the record support her claim. The Judge's error regarding the amount of Applicant's student loans, however, was harmless 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). Applicant also disputes that the alleged vehicle loan was placed for collection with a collection agency. Although a credit report (Government Exhibit 6 at 1) reflects the vehicle loan was a collection account, it does not indicate a collection agency was involved. Applicant's dispute is apparently based on the Judge's comment in his analysis that she was making payments on the vehicle loan pursuant to " a repayment plan offered by the collection agent[.]" Decision at 6. We recognize that the Judge could have been referring to an employee of the creditor in using the term

"collection agent." Even if the Judge erred by using that term, it did not likely affect the outcome of the case. *Id.*

Some of Applicant's assignments of error fall outside the scope of our review. For example, Applicant disputes that the vehicle loan was charged off. Appeal Brief at 2, 4, and 5. The Judge, however, did not make findings of fact or reach conclusions that the vehicle loan was charged off. Our scope of review is limited to determining whether the Judge committed certain harmful errors. *See* Directive ¶ E3.1.32. Applicant's contention regarding the vehicle loan being charged off fails to raise any harmful error by the Judge. Applicant also notes the Judge's adverse decision has caused a large reduction in her income. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

The balance of Applicant's arguments amount to a challenge to the way in which the Judge weighed the evidence. Her arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017).

Applicant has failed to establish that the Judge committed any harmful error. 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 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