

KEYWORD: Guideline F

DIGEST: Applicant relies on favorable Hearing Office decisions involving bankruptcies to argue the Judge erred in his analysis of this case. Generally, how fact scenarios were adjudicated in other Hearing Office decisions are not a relevant consideration in the Appeal Board’s review of a case. On appeal, Hearing Office decisions may be useful to highlight a novel legal principle, but only in rare situations—such as separate cases involving spouses, cohabitants, or partners in which the debts and the financial circumstances surrounding them are the same—would the adjudication outcome in another case have any meaningful relevance in our review of a case. The decisions that Applicant cites do not fall into that category. They have no direct relationship or unique link to Applicant’s case that would make them pertinent here. Adverse Decision Affirmed.

CASE NO: 19-03174.a1

DATE: 02/10/2021

DATE: February 10, 2021

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| In Re: |) | |
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| ----- |) | ISCR Case No. 19-03174 |
| |) | |
| Applicant for Security Clearance |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Joseph D. Jordan, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 16, 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 hearing. On December 7, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy 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. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant has worked for Federal contractors since the early 1990s. She has a long history of delinquent debts and financial instability. She received Chapter 7 bankruptcy discharges in 1996, 2011, and 2019.

Over the years, Applicant experienced layoffs when her employers lost contracts. She also had a difficult marriage that impacted her finances. She funded higher education for herself and her two children and “has long had several hundred thousand dollars in unresolved student loan debt that she has never put forth a serious effort to pay. She knows these debts are not dischargeable in bankruptcy, yet she provides no evidence of responsible action to resolve them. She also has a history of buying expensive cars that she cannot afford.” [Decision at 6.] “Given her history, Applicant has not acted responsibly in attempting to improve her finances, and has not established enough of a track record of financial stability and payments towards her debts.” [Decision at 1.] Applicant failed to mitigate the Guideline F security concerns.

Discussion

In her appeal brief, Applicant does not challenge any of the Judge’s specific findings of fact. Rather, she contends the Judge failed to adhere to Executive Order 10865 and the Directive by not considering all of the record evidence and by not properly applying the mitigating conditions and whole-person concept. She asserts that the Judge did not “properly identify” or apply Mitigating Conditions 20(a), 20(b), and 20(c). Appeal Brief at 7. The Judge, however, individually addressed each of those mitigating conditions. Decision at 6. We find no error in his analysis of those conditions. Applicant also asserts that the Judge did not give proper weight to the financial impacts arising from her periods of unemployment, her former marriage, and her efforts to finance her children’s education. The arguments raised in the appeal brief are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough 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. 19-01495 at 3 (App. Bd. Sep. 30, 2020).

Additionally, Applicant relies on favorable Hearing Office decisions involving bankruptcies

to argue the Judge erred in his analysis of this case. Generally, how fact scenarios were adjudicated in other Hearing Office decisions are not a relevant consideration in the Appeal Board’s review of a case. *See, e.g.*, ISCR Case No. 19-03344 at 3-4 (App. Bd. Dec. 21, 2020). On appeal, Hearing Office decisions may be useful to highlight a novel legal principle, but only in rare situations—such as separate cases involving spouses, cohabitants, or partners in which the debts and the financial circumstances surrounding them are the same—would the adjudication outcome in another case have any meaningful relevance in our review of a case. The decisions that Applicant cites do not fall into that category. They have no direct relationship or unique link to Applicant’s case that would make them pertinent here.

Applicant has failed to establish any harmful error below. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable.

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