

The Judge's Findings of Fact and Analysis

Applicant is in her early thirties, divorced, and the single parent of a young child. A high school graduate, she served in the military on active duty and in the reserves for a total of nine years. For her current employment, Applicant seeks access to sensitive information.

The SOR alleged that Applicant had ten delinquent debts totaling in excess of \$30,000. Applicant admitted seven of the ten debts alleged. Credit reports confirm that the three debts that she denied are also still delinquent. Applicant has struggled financially after separating from the military, largely because she receives little financial support from her child's father and is responsible as a single parent for all household and child-related costs. As a result, Applicant fell delinquent on her auto loan, as well as on various consumer and utility debts. She has focused on paying her rent and resolving the auto loan deficiency. Applicant did not submit documents to corroborate her testimony that the auto loan, which is alleged, is now current. She has made no inroads on the other nine debts alleged. All ten debts alleged in the SOR remain delinquent.

Applicant began working for her current employer in July 2017. Letters and emails from her employer indicate that Applicant is a valued employee. She had intended to begin resolving her delinquent debt, but the Covid 19 pandemic complicated her finances, as siblings became dependent on her after losing their jobs. Post-hearing, Applicant submitted a budget and took steps to move in with a family member to reduce her monthly expenses.

Discussion

Applicant essentially asserts that the Judge did not take into account all available testimony and evidence in rendering the decision. As a preliminary matter, the Board notes that there is a rebuttable presumption that an Administrative Judge considered all the record evidence unless the Judge specifically states otherwise. *See Western Pacific Fisheries, Inc. v. SS President Grant*, 730 F.2d 1280, 1285 (9th Cir. 1984). More specifically, Applicant complains that the Judge described her as being "at risk of having to engage in illegal acts to generate funds," although she has no criminal background, and that the Judge described Applicant's behavior as indicating "poor self-control, lack of judgment or unwillingness to abide by rules and regulation," when her problems were instead caused by single parenthood and inadequate pay. Appeal Brief at 1. First, it should be noted that Applicant is complaining of the language of Adjudicative Guideline ¶ 18, which the Judge cited to and quoted in her decision as the relevant trustworthiness concern for financial considerations. Second, while the Government is sympathetic to Applicant's struggles, it has a great interest in avoiding or reducing the risk that persons granted access to sensitive information might mishandle or fail to properly safeguard such information because their unresolved financial difficulties make them vulnerable or susceptible to bribery or other undue financial pressure. Furthermore, persons who are financially irresponsible might also be irresponsible, unconcerned, or negligent in the handling and safeguarding of protected information. Even in the absence of any illegal acts, Applicant's financial misfortune left her with financial difficulties that were unresolved as of the close of record in her case. The Judge does not need more to conclude that security concerns under Guideline F were established. *See, e.g., ISCR Case No. 00-0104 at 5 (App. Bd. Mar. 21, 2001).*

Applicant also states that the Judge erred in finding that she has been with her current employer since July 2017, as she has been with this employer only since March 2020. The record is not entirely clear on Applicant's recent employment history: it does, however, confirm that Applicant has been steadily employed since leaving active duty in 2013, but switched employers at some time after completing her security clearance application in January 2020. GE 1 at 15-18; Tr. at 20, 23. To the extent that the Judge misunderstood Applicant's recent employment history, we conclude that it would not have affected her analysis or decision, as Applicant was steadily employed. An error that likely had no effect on the Judge's decision is harmless. *See, e.g.*, ADP Case No. 13-01074 at 3 (App. Bd. Aug. 25, 2014).

None of Applicant's arguments are enough to rebut the presumption that the Judge considered all the evidence in the case. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). To the extent that Applicant is more broadly arguing that the Judge mis-weighed the evidence, her arguments are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.* Applicant also cited to her post-hearing efforts to address her debts. Those efforts are not part of the record and constitute new evidence that the Board may not consider. *See* Directive ¶ E3.1.29.

Finally, Applicant asserts that the Judge advised her to consider bankruptcy. There is a discussion on the record by the Judge that could be interpreted as advising the Applicant to consider filing for bankruptcy. Tr. at 40-43. The Board has previously noted that giving advice to Applicant on what to do to qualify for a security clearance would be inconsistent with the obligation to conduct adjudications in a fair and impartial manner. *See, e.g.*, ISCR Case No. 11-10499 at 2 (App. Bd. Aug. 21, 2013). The same holds true when the Applicant seeks a trustworthiness designation. However, the Board does not have supervisory authority over the conduct of Hearing Office Administrative Judges. *See* ISCR Case No. 02-04344 at 3 (App. Bd. Sep. 15, 2003). Upon review of this record, the Board concludes that the case outcome was not affected by the dialogue between Applicant and the Judge regarding any prospective bankruptcy, and that Applicant therefore was not prejudiced by the colloquy.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.*, ADP Case No. 17-03252 at 3 (App. Bd. Aug. 13, 2018). Applicant's brief discloses no reason to disturb the Judge's conclusion that the evidence raises trustworthiness concerns under Guideline F.

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira D. Modzelewski
Moira D. Modzelewski
Administrative Judge
Member, Appeal Board