



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: December 8, 2022

In the matter of:)	
)	
-----)	ISCR Case No. 20-02304
)	
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 9, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 12, 2022, after the hearing, Administrative Judge Carol G. Ricciardello denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had 27 delinquent debts and that she had a Chapter 13 bankruptcy filing dismissed in 2018. In responding to the SOR, Applicant denied two of the alleged debts, claiming one was fraudulent and the other did not belong to her. In admitting the other alleged debts, Applicant claimed they were either paid, settled, or disputed. The Judge found favor of Applicant on six debt allegations and against her on the remaining allegations. The Judge concluded that Applicant presented insufficient evidence to mitigate the alleged security concerns.

Applicant's appeal brief consists of the following assertion of error:

I feel that my progress for my clearance was not fairly taken into consideration. I felt that I had a bias against me because of the color of my skin. I felt uneasy and unheard when given the opportunity to submit the progress of my debt[.] I truly felt that it was not taken into consideration and a decision was already made.
[Appeal Brief at 1.]

The Appeal Board is tasked to address material issues raised by the parties to determine whether the Judge committed factual or legal error. Directive ¶¶ E3.1.32 – E3.1.32.3. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Administrative Judge committed factual or legal error. *See, e.g.*, ISCR Case No. 02-12199 at 2 (App. Bd. Aug. 8, 2005).

Bias and Unlawful Discrimination

There is a rebuttable presumption that quasi-judicial officers are impartial and unbiased. *See Schweiker v. McClure*, 456 U.S. 188, 195 (1982). An appealing party has a heavy burden of demonstrating conduct by an Administrative Judge that deprived the hearing or decision of fairness and impartiality. *See, e.g.*, DISCR Case No. 94-0282 at 4-5 (App. Bd. Feb. 21, 1995) (citing Federal cases). In this regard, an adverse decision or adverse rulings, standing alone, do not demonstrate judicial bias. *See, e.g.*, ISCR Case No. 08-03233 at 3 (App. Bd. Aug. 7, 2009) and ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020); *see also Bixler v. Foster*, 596 F.3d 751 at 762 (10th Cir. 2010).

Applicant's brief does not direct our attention to anything in the record that would likely persuade a reasonable person that the Judge was lacking in the requisite impartiality. More specifically, her claim that she felt uneasy and unheard is not sufficient to establish judicial bias. Based on our review of the record, we find no reason to conclude that the Judge exhibited bias against her. We conclude that Applicant's arguments fail to meet the heavy burden on her to rebut the presumption of impartiality. *See, e.g.*, ISCR Case No. 18-02722 at 5. Additionally, Applicant's bare allegation of discrimination is not sufficient to establish a *prima facie* case that she was treated unfairly or differently on the basis of her race or the color of her skin. We find adversely to Applicant on these assignments of error.

Weighing Evidence

In the decision, the Judge cites to the specific evidence, *i.e.*, exhibits and pages of the transcript, supporting her findings of fact. In her brief, Applicant does not identify any specific evidence that the Judge did not consider. Applicant's contention that the Judge did not consider her debt resolution progress amounts to a disagreement with the Judge's weighing of the evidence. This contention is not enough to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Conclusion

Applicant failed to establish 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 the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with 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 national security.”

Order

The decision is **AFFIRMED**.

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

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

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