KEYWORD: Guideline F

DIGEST: Applicant, relying on the Federal Rules of Evidence (FRE), asserts that the Judge erred by saying an exhibit lacked authenticity. The FRE addresses admissibility. The Judge appears to have admitted the exhibited. His discussion of authenticity seems to have been part of his weighing the evidence. Adverse decision affirmed.

CASENO: 14-06011.a1

DATE: 12/09/2015

DATE: December 9, 2015

In Re:	)	
	)	
-----	)	ISCR Case No. 14-06011
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
John Gagliano, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 13, 2015, 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 August 31, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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

The Judge made the following findings pertinent to the issue raised on appeal: Applicant attended an officer training program for a branch of the U.S. military but decided not to accept a commission. He has worked for his current employer since December 2013 and has held a clearance since 2001.

SOR allegation 1.d was a student loan in the amount of over $22,000 that became delinquent in 2010. The loan was signed by Applicant's son, with Applicant as a co-signer. Applicant did not disclose this debt in his security clearance application (SCA). He stated that he had not recalled it at the time he completed the SCA. In 2013, the creditor was awarded a judgment in an action naming the son only as defendant. Applicant provided no information about how or why he was removed from liability as a co-signer.

In the response to the File of Relevant Material (FORM), Applicant presented a settlement letter from the collection agency to whom this debt had been transferred. In this letter, dated May 15, 2015, Applicant and his son are listed as account holders. The letter states, in pertinent part, "the above referenced account has been settled in full." Decision at 3. Applicant did not explain why his name appeared as a debtor in this document if the judgment was only against his son. He provided no information about the terms of the settlement or of any accompanying documentation from a court. "Finally, the settlement letter lacks authenticity because it is unsigned." *Id.*

Between mid-2005 and mid-2010, Applicant co-signed at least five student loans on behalf of his children. After these loans were defaulted, Applicant paid them off. In addition, Applicant co-signed about eight accounts to enable his son to obtain credit in order to open a business. Applicant's son defaulted on these accounts, and Applicant found out about it when he received notice from the courts. Applicant paid these accounts off from his savings and retirement accounts, with the exception of the loan referenced above.

The Judge's Analysis

The SOR alleged four debts, three of which the Judge resolved in Applicant's favor.[1] However, he reached the opposite conclusion for the $22,000 student loan alleged at SOR ¶ 1.d. The gravamen of the Judge's analysis was that Applicant had provided insufficient information about this loan and its apparent resolution to meet his burden of persuasion as to mitigation.[2] The Judge noted, for example, that Applicant had failed to disclose this loan in his SCA, even though it was his largest delinquent debt. He also stated that Applicant had failed to explain how he was removed from secondary liability on the judgment filed in 2013. The Judge also cited to evidence of Applicant's having co-signed numerous loans for his children, describing this conduct as a "bewildering" exposure to extensive liability. *Id*. at 6. Though commending Applicant for his good judgment in resolving three of the four SOR debts, regarding SOR 1.d he stated "The lack of an explanation of how he removed himself from liability for the January 2013 judgment against his son reduces the mitigation Applicant is entitled to under AG ¶ 20(c)."[3] *Id.* The Judge also stated that Applicant's case for mitigation was further impaired by an absence of information about the terms of the settlement of the student loan.

In the whole-person analysis, the Judge cited to evidence of Applicant's having held a security clearance since 2001 and his concern for his children, evidenced by his having co-signed several loans with them. However, the Judge also reiterated his concerns that there was no explanation for Applicant's apparently having been dropped from the $22,000 student loan and the lack of evidence as to the terms of the settlement. The Judge stated that, given the quantum of evidence Applicant submitted concerning the other three SOR debts, one would expect him to have submitted at least as much for the remaining one rather than simply an unsigned settlement letter.

Discussion

Applicant has attached to his brief documents that are not included in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends that the Judge erred in concluding that the settlement letter lacked authenticity because it bore no signature. He notes that Federal Rule of Evidence 901 provides that authentication may be shown by "evidence sufficient to support a finding that the matter in question is what is proponent claims." Appeal Brief at 3, quoting FRE 901(a). The Federal Rules of Evidence serve as a guide in DOHA proceedings. Directive ¶ E3.1.19. However, Rule 901 addresses authentication as a condition of admissibility. In the case before us, it appears that the Judge did not exclude the letter as being irrelevant. Rather, he appears to have included it in the record but extended it less weight than he might have had it been signed. The weight that a Judge assigns to evidence is a matter within his or her discretion. Mere disagreement with a Judge's

[1]These allegations pertained to two medical accounts and to a student loan.

[2]Directive ¶ E3.1.15 provides that the applicant is responsible for presenting evidence in rebuttal, explanation, extenuation, or mitigation and bears the ultimate burden of persuasion as to obtaining a favorable decision.

[3]Directive, Enclosure 2 ¶ 20(c): ". . . there are clear indications that the problem is being resolved or is under control[.]"

weighing of the evidence is 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. 14-05251 at 3-4 (App. Bd. Oct. 5, 2015). In this case, we find no reason to disturb the Judge's treatment of this letter.[4]

Applicant also argues that the Judge placed too much weight on his finding that only the son was listed as a defendant in the judgment although Applicant was included as a co-debtor in the subsequent settlement letter. He argues that this could be for a number of reasons that do not reflect poorly upon Applicant. Again, however, this amounts to a disagreement with the Judge's weighing of the evidence. In any event, a Judge must evaluate an applicant's case for mitigation in light of the record evidence viewed as a totality. *See, e.g.*, ISCR Case No. 12-04813 at 4 (App. Bd. Jul. 31, 2015). In this case, in addition to the two matters discussed above, the Judge noted that Applicant had failed to list the student loan on his SCA although it was his largest debt and that there is no record evidence of the terms of the loan settlement. Moreover, the record contains evidence that, by co-signing numerous loans for his children, Applicant exposed himself to substantial liability, which is relevant in evaluating his judgment. *See, e.g.*, ISCR Case No. 14-01479 at 2 (App. Bd. Sep. 2, 2015) for the proposition that a Judge should consider the extent to which an applicant's circumstances cast doubt upon his judgment, self control, and other characteristics essential to protecting national security information. In light of the standard prescribed for security clearance decisions by the Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), that a clearance may be granted only when 'clearly consistent with the interests of the national security,'" the Judge's adverse decision is sustainable. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

[4]That Applicant did not address this debt until several months after receipt of the SOR, despite having been on notice of it at least from the date of his clearance interview, also supports the Judge's decision. *See, e.g.*, ISCR Case No.14-01243 at 3 (App. Bd. Jun. 18, 2015) (Timing of debt payments is relevant in evaluating an applicant's case for mitigation).

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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