

KEYWORD: Guideline F

DIGEST: Given a ration basis, a Judge may conclude that some allegations are mitigated while others are not. Hearing office decisions are not binding on other Judge or on the Appeal Board. Adverse decision affirmed

CASENO: 14-03747.a1

DATE: 11/13/2015

DATE: November 13, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-03747
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 8, 2014, 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 27, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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

Applicant works for a Defense contractor. She served three months in the military and has attended college, without receiving a degree. Applicant underwent a divorce in 2007.

Applicant’s SOR lists numerous delinquent debts, which include two judgments against her. The Judge found that one of the judgments had been paid and that Applicant successfully disputed the validity of the other. Many of her remaining debts are for student loans. Applicant entered into a consolidation agreement to pay off these obligations, with monthly payments of about \$272. Applicant provided no evidence of payments under this agreement. Applicant did provide corroboration for her payoffs of several other debts, however.

Applicant claimed that some of her SOR debts were not legitimate, on the grounds that she could not identify them or they were not on her credit report. Applicant attributes her financial problems to her divorce. She has established a budget and is working to resolve her debts. Applicant did not provide evidence of financial counseling or of good character, community involvement, etc.

The Judge’s Analysis

The Judge resolved some of the SOR allegations in Applicant’s favor. However, for others, including the student loans, he reached the opposite conclusion. He noted evidence that Applicant’s divorce affected her financial condition, but he stated that its actual impact was not clear from the evidence in the record. He also noted that the fact that debts no longer show up on a credit report is not in and of itself a reason to believe that the debts have been resolved. The Judge stated that, after receiving the SOR, Applicant contacted her creditors and entered into payment agreements with many of them. However, he concluded that Applicant had “shown insufficient efforts in addressing” her debts. Decision at 6. He also stated that Applicant’s apparently inability to make significant progress on her debts prior to the issuance of the SOR was a factor that weighed against her.

Discussion

Applicant contends that the Judge’s application of the whole-person concept was faulty. Among other things, she cites to what she believes are inconsistencies in his analysis of her case. She notes that the Judge accepted her contention that she had paid off some of her debts. She argues that, having found her credible on these, the Judge had no basis to reject her explanations for the remainder. As a consequence, the Judge produced a “fragmented analysis.” Appeal Brief at 13.

We do not find this argument to be persuasive. It is within a Judge’s discretion to conclude that an applicant has mitigated some of the allegations against him but not others. So long as a Judge has articulated a rational basis for his or her conclusions, we will not disturb them on appeal. First of all, we are required to give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. In addition, the Judge properly noted that mere evidence that debts no longer appear on a credit report is not a reason to believe that they are not legitimate or that they have been paid. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Moreover, although he found that Applicant had entered into a payment plan for her student loans, she did not provide evidence of actual payments. These findings are consistent with the record that was before the Judge and support his conclusion that Applicant had not met her burden of persuasion. *See* Directive ¶ E3.1.15 for the proposition that the applicant bears the burden of persuasion as to mitigation. All in all, we conclude that the Judge’s whole-person analysis complied with the requirement of the Directive, in that he evaluated Applicant’s security-significant conduct in light of the record as a whole. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

Applicant’s citation to various aspects of the record is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Neither is it sufficient to show that the Judge mis-weighed the evidence. Applicant draws our attention to another Hearing Office case. However, this case does not undermine the Judge’s decision. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-02632 at 3 (App. Bd. Aug. 28, 2015). Moreover, there are significant factual differences between the case that Applicant has cited and her own.

Applicant argues that the Judge’s findings contain errors. She notes, for example, the he found that she had not completed college, even though she stated in her security clearance application that she had a bachelor’s degree. Item 2, Security Clearance Application, at 11. We conclude that this error is harmless, in that it did not likely affect the overall outcome of the case. *See, e.g.*, ISCR Case No. 12-00678 at 2 (App. Bd. Jun. 13, 2014). The Judge’s material findings are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1.¹

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. *See* ISCR Case No. 14-04186 at 4 (App. Bd. Oct. 28, 2015) (Timing of debt payment is relevant in Guideline F cases). The decision is sustainable on this record. “The general standard

¹We examine a Judge’s findings of fact to see if they “are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” *See also* *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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