

KEYWORD: Guideline F

DIGEST: Applicant has failed rebut the presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 09-06567.a1

DATE: 08/19/2011

DATE: August 19, 2011

In Re:)
-----) ISCR Case No. 09-06567
)
Applicant for Security Clearance)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 9, 2010, DOHA 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 May 31, 2011, after the hearing, Administrative Judge John Grattan Metz, Jr. denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following pertinent findings of fact: Applicant is 41 years old and has been employed by a defense contractor since May 2008. She was unemployed from April to May 2003 and from April 2005 to May 2005. Otherwise she has been fully employed since January 1999. She earns \$60,000 per year. She also works a second job to make ends meet. Applicant is the never-married mother of two children. The murder of her son's father in May 2008 resulted in a change from \$500 per month support payments to \$1,500 per month social security payments. The social security payments end in June 2011. Her daughter's father is obligated to pay \$710 per month in support but rarely does so.

Applicant filed for Chapter 7 bankruptcy protection in May 2000 and discharged \$4,000 worth of debts in September 2000. The SOR alleges 19 delinquent debts totaling over \$68,000. Applicant admits three delinquent debts totaling nearly \$15,000. Eight debts are educational loans that fell delinquent in 2007 and 2008. Applicant rehabilitated the loans with payments in 2010. She has obtained two temporary hardship forbearances on the loans, the latter to expire in October 2011. The eight educational loans total over \$43,000. Applicant expects to borrow more money to complete her undergraduate degree. A medical bill for \$8,954 has been in collection by several collection agents. She has made regular payments pursuant to agreement, however it appears that more than half of each monthly payment goes to pay interest, which continues to accrue. Applicant claimed that she has a budget, but did not provide a copy. She has not had any financial counseling because she did not want anyone involved in her financial affairs.

The Judge reached the following conclusions: Applicant's financial difficulties are both recent and multiple, and not apparently due to unusual circumstances not likely to recur. Applicant's efforts to address her debts have been mixed. Although she has made some progress on her debts, four debts listed in the SOR were not resolved until around the time of the hearing. Applicant has received no financial counseling, nor has she produced a budget that demonstrates how her finances will remain stable in the face of two assured events in 2011- her income will decline \$1,500 monthly when her son's social security payments end and she will have to resume payments on her educational loans. While Applicant has made substantial progress resolving her debts, she has not established a clear track record that suggests her financial problems will not recur.

Applicant asserts that the Judge made an unfair judgment against her without taking everything into consideration. She also asserts that in the Judge's findings of fact, it was stated that she denied certain remaining allegations in reference to her credit report, and she states that she has not denied that she has had bills in her past that were delinquent. In her brief, Applicant provides details regarding her efforts to pay off her debts. Applicant's assertions do not establish error on the part of the Judge.

In support of her appeal, Applicant has submitted new matters not contained in the record, which the Board cannot consider. *See Directive ¶ E3.1.29.* ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-06518 at 2 App. Bd. Mar. 3, 2009). Regarding her assertion that the Judge ignored aspects of her case, the Board notes that a judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e.g.,* ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). Applicant has not presented any matters that rebut the presumption in this case. Regarding her statement that the Judge erroneously found that she denied certain debts, the Board notes that the Judge's statement is a reference to Applicant's answers to the SOR. A review of the SOR and Applicant's answers thereto reveal that the Judge's findings on this point were correct.

As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He discussed the applicability of the mitigating factors listed under Guidelines F and indicated in some detail why the mitigating conditions did not apply. These conclusions were reasonable given the Judge's findings about the nature of Applicant's indebtedness, the circumstances under which it arose, the number of debts still unresolved, the lack of credit counseling or the establishment of a formal budget on Applicant's part, and the prospect that Applicant will soon have fewer monetary resources to rely on when addressing her finances.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *Id.* After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his adverse decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "The general standard 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board