

KEYWORD: Guideline F

DIGEST: According to the Directive, the DOHA security clearance process is not normally terminated once a hearing has commenced. Adverse decision affirmed

CASENO: 08-09362.a1

DATE: 02/19/2010

DATE: February 19, 2010

In Re:)
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 -----) ISCR Case No. 08-09362
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)
 Applicant for Security Clearance)
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)

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 March 24, 2009, 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 November 12, 2009, after the hearing, Administrative Judge Martin H. Mogul 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 issues on appeal: (1) whether the Judge considered all the record evidence; and (2) whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge found that Applicant has experienced financial difficulties as evidenced by numerous outstanding and overdue consumer credit card and medical debts. Applicant testified that the majority of her debts are the result of medical bills that her family has accrued over the years, including a medical condition of her husband that left him unemployed for a time. Notwithstanding Applicant's assertions, the Judge found that the majority of the debts listed on the SOR were for credit card debt rather than medical bills. Additionally, the Judge found that Applicant does not attribute most of her financial difficulties to the fact of her husband's unemployment. The Judge concluded that there was little evidence introduced to establish that Applicant has resolved most of the overdue debts, and a great deal of her debt is from overuse of credit cards. Because of this and Applicant's lack of a stable economic outlook, the Judge resolved Guideline F against her.

Applicant argues that she provided evidence that she had made payments toward her debt and that she and her husband were engaged in financial counseling, and this evidence was ignored and not taken into consideration. There is a rebuttable presumption that a Judge has considered all the record evidence unless he or she indicates otherwise. That presumption is not overcome here. A review of the evidence, including a post-hearing submission proffered by Applicant, reveals that the Judge specifically references Applicant's efforts at debt repayment and her attempts to obtain debt counseling.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

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 Guideline F mitigating conditions and cogently explained why there was insufficient mitigation to overcome the government's security concerns, stressing the facts that Applicant's debts are largely unresolved and her current financial profile does not suggest that she is in a position to meaningfully resolve her overdue indebtedness.

Applicant states that her current job requires only a confidential clearance and does not understand why she was processed for a secret clearance. The level of clearance currently held, or the level of clearance applied for do not affect the Judge’s analysis or the Board’s review. Directive ¶ 3.2 makes no distinction concerning basic clearance levels in its procedures for deciding whether access to classified information is clearly in the national interest. *See* ISCR Case No. 05-11366 at 3 (App. Bd. Jan. 12, 2007).

Applicant states that her case should have been seen under different circumstances due to her federal contractor employment status. Applicant fails to state with sufficient specificity how the fact of her employment status established error in the Judge’s analysis. To the extent that Applicant may be raising a jurisdictional issue, it is not dispositive in this case. There is no record evidence that suggests that Applicant was anything other than a contractor employee at the commencement of the security clearance application process or that her status changed prior to the hearing.¹ According to the Directive, ¶ 4.4, the DOHA security clearance adjudication process is not normally terminated once a hearing has commenced.

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. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett

¹Government Exhibit 1. In her brief, Applicant states that she is a DoD civilian employee and was formerly a government contractor.

Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board