

KEYWORD: Guideline F; Guideline E

DIGEST: There is no prerequisite that documents be notarized as a precondition of their admissibility. A possibly erroneous prior address listed in a credit report pertains to the weight of the evidence rather than its admissibility. Adverse decision affirmed.

CASE NO: 10-03380.a1

DATE: 07/27/2011

DATE: July 27, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-03380
)	
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 16, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 12, 2011, after the hearing, Administrative Judge Rita C. O’Brien denied Applicant’s request for a security clearance. Applicant timely 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 54 years old. He married in 1980 and has two children who reside with him. In 2007, he accepted early retirement from a company for whom he had worked for 21 years. He then began a small computer business, and was otherwise unemployed. After briefly holding a few part-time jobs, Applicant had a full-time position from August 2008 to August 2009. He was then terminated. He has worked for federal contractors since December 2009. Before his retirement in 2007, Applicant earned over \$100,000 per year. He owned his own home, which in July 2010 was worth approximately \$500,000. Starting in 1990, he owned about 24 credit card accounts, half of them between 2002 and 2007. In 1990, he bought a townhouse rental property. He began renting the property to his mother and his brother in 2002. In 2004 and 2005, Applicant opened several loan accounts. He used the money to make home improvements and to take trips. In 2006, Applicant applied for a \$100,000 home equity line of credit, secured by the townhouse.

In 2007, Applicant's mother and brother suffered strokes. His brother lost his job and could not pay the rent to Applicant. Applicant's mother died the day Applicant took his early retirement in 2007. After that, he went into some kind of depression and made bad financial decisions. In August 2007, he went on a cruise that cost \$16,000. In October 2007, he vacationed in Hawaii. Applicant was subsequently unemployed and underemployed and lived on his retirement savings. Between 2007 and 2009, he accumulated numerous delinquencies. In January 2010, Applicant had ten active credit card accounts and was at least one month behind on six of them. The delinquencies lengthened, and Applicant contacted two debt-consolidation companies but did not hire either. Pursuant to an agreement with the creditors, Applicant made two payments each on three accounts prior to January 2010. Applicant filed for Chapter 7 bankruptcy in July 2010. His petition shows his liabilities exceeded his assets by more than \$400,000. He received his discharge in October 2010. The rental townhouse went into foreclosure.

Applicant failed to report any financial issues on his 2009 security clearance application. He did not report that he had debts that were sent to a collection agency; that he had debts more than 90 or 180 days past due; that he had property which had been foreclosed; and that he had debts that were charged off. His 2009 credit bureau report shows that Applicant had debts that fell into each of these categories. During his investigation, Applicant offered several reasons for his failure to disclose: he knew the government would learn of his debts through its investigation; he did not think his debts were 180 days overdue; he had technical problems with the application software; and he entered telephone numbers without dashes on the form, which caused the software to reject his application, although his application clearly contains telephone numbers both with and without dashes.

The Judge reached the following conclusions: Applicant decided to retire from a well-paid position, and was subsequently unable to maintain payments on his numerous accounts. Several events that Applicant could not have foreseen or controlled affected his ability to meet his financial obligations. However, Applicant did not act reasonably in response. Within two months of retiring, and with a large unresolved debt load, Applicant spent significant funds on two vacations. The job had provided a good and stable income, and subsequently, he was unemployed for a year. Applicant clearly filed the bankruptcy petition in response to the security investigation, as stated in his attorney's letter, rather than in a good-faith effort to resolve his legitimate obligations. Applicant was aware of his financial difficulties at the time he filled out his security clearance application.

Applicant's explanations as to why he did not discuss his financial delinquencies on his application were not credible, especially in light of the fact that he had his credit bureau report with him when he completed the application.

Applicant asserts that the evidence the Judge relied upon for her findings of fact contained numerous errors, including the credit report documents. He argues that the documents establishing the Government's case were not notarized for authentication purposes and were therefore disqualified as evidence. Applicant argues that the address listed for him on the credit report is incorrect, and this fact alone should disqualify the document from consideration. Applicant's assertions do not establish error on the part of the Judge.

There is no requirement in DOHA cases that documents be notarized as a prerequisite for admissibility. Moreover, Applicant offered no objection to the documents presented by the Government at the time they were offered into evidence. While *pro se* Applicant's are not expected to present their cases at hearing with the skill expected of a lawyer, they are nevertheless responsible for taking reasonable steps to protect their interests. Having failed to object to the Government's documents at the time of their introduction, Applicant cannot successfully challenge their admission for the first time on appeal.

Applicant argues that a credit report introduced by the Government contains an incorrect address where he never lived, therefore the document was unreliable and should not have been admitted or considered. Such an error, unless it conclusively established that the credit report in question was not that of Applicant, would go only to the weight given the document and would not render it inadmissible. Additionally, a review of the credit report indicates that Applicant's correct current address appears in the same field of data that contains the alleged erroneous address. It is not clear from the document that the address entry complained about by Applicant is a representation of Applicant's address.

The Board cannot be expected to guess what an appealing party believes is factual or legal error by the Judge. *See* ISCR Case No. 00-0050 at 2-3 (App. Bd. Jul. 23, 2001). To the extent that Applicant's brief is clear, he appears to challenge several of the Administrative Judge's findings of fact. The Board concludes that the Judge's material findings of security concern are sustainable.

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).

Applicant's arguments are essentially nothing more than an alternate view of the record evidence.

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. She discussed the applicability of the mitigating factors listed under Guidelines F and E 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, and the inconsistent explanations offered by Applicant concerning his failure to report his financial troubles on his security clearance application.

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 her 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
Administrative Judge
Member, Appeal Board

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