

KEYWORD: Guideline F; Guideline E

DIGEST: Applicants are expected to take timely reasonable steps to protect their rights under the Directive. Applicant has not shown that he was denied due process. Adverse decision affirmed.

CASENO: 10-07318.a1

DATE: 10/26/2011

DATE: October 26, 2011

In Re:)
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-----) ISCR Case No. 10-07318
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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 February 22, 2011, 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 that the case be decided on the written record. On August 31, 2011, after considering the record, Administrative Judge Erin C. Hogan 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 decision was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following findings of fact: Applicant is 44 years old, a high school graduate, single, and has no children. On March 3, 2010, Applicant completed a security clearance questionnaire wherein he was required to list delinquent debts and other problems in his financial record. He answered "no" to each of 15 questions. Applicant's security clearance background investigation revealed 24 delinquent accounts with an approximate total balance of \$31,821. In his answer to the SOR, Applicant stated that four debts would be paid by June 1, 2011. He did not provide corroboration for this assertion. He claims he formally disputed numerous other debts, but he did not provide proof that he submitted a formal dispute and he did not provide any results from the dispute[s]. Applicant asserts that if six of the debts listed in the SOR were actually his debts, they are uncollectable as the statute of limitations has passed. Applicant made other assertions regarding his debts, including an indication that he filed for bankruptcy in 1998, which discharged three debts listed in the SOR. He did not provide a copy of his 1998 bankruptcy pleadings. Applicant admits that his financial problems resulted from living beyond his means. After his 1998 bankruptcy, Applicant believes that he has a better understanding of financial responsibility. He indicates that he did not list his delinquent accounts on his security clearance questionnaire because he did not have a copy of his credit report with him. He claims he was not aware of the delinquent accounts.

Applicant has not provided documentation to verify any of his assertions pertaining to debts being discharged in his 1998 bankruptcy, debts to be paid, or that he formally disputed the accounts that he claims do not belong to him. He did not provide any reference letters or copies of his performance evaluations for consideration under the whole-person factors.

The Judge reached the following conclusions: Applicant's financial situation continues to cast doubt on his reliability, trustworthiness, and good judgment. He provided no evidence that the financial problems were caused by circumstances beyond his control. Applicant's financial situation is unlikely to be resolved in the near future. He has only provided proof that he has paid two debts. He did not provide proof that he took steps to formally dispute the debts whose legitimacy he questions. Even if some of Applicant's debts are legally unenforceable under the state law where he acquired the debt, the circumstances under which Applicant acquired them remains a security issue because he owes these debts and refuses to pay them. Applicant did not provide sufficient mitigating evidence to establish that he is resolving his delinquent accounts and that he is taking steps to prevent future financial problems. Regarding Guideline E, in a security clearance interview Applicant admitted responsibility for some of the debts that he knew were his but claimed he did not

deliberately falsify his security clearance application. His assertions are not credible based on the extensive amount of delinquent debt and his history of financial irresponsibility, including a 1998 bankruptcy discharge. It is unlikely that a reasonable person would forget such debts. Applicant intentionally omitted his financial delinquencies from his security clearance questionnaire.

On appeal, Applicant states that he is aware of the fact that it appears that no evidence was provided on his behalf. He attributes this to the fact that mitigating evidence, specifically credit reports, were not received by him in a timely manner, and he was unable to point out debts that he disputed or disparities between the government's evidence and the credit reports. The record and case file indicate a copy of the File of Relevant Material (FORM) was sent to Applicant on May 25, 2011 (receipt is dated June 1, 2011), and he was instructed to file any objections and/or supply additional information for the Judge's consideration within 30 days. Applicant did not submit any additional material and the case file was forwarded to the Judge on August 2, 2011. At no time was any document (regarding procedure or otherwise) received from Applicant.

Had Applicant felt he had an inadequate amount of time in which to respond, it was incumbent upon him to make his concerns known. Applicants are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 07-15235 at 2 (App. Bd. Oct. 3, 2008). Here, Applicant has not established that he did so in response to a perceived problem, or that he was denied a reasonable opportunity to present his case. Applicant has not shown that he was denied due process.

The Board interprets the remaining portions of Applicant's brief as assertions of fact in support of a case for mitigation. Applicant makes substantive comments about his debts and the plan he now has in place for addressing the delinquencies. He states that he was not trying to live above his means. Included in his appeal are a number of documents. These constitute new evidence, which the Board cannot consider. *See* Directive ¶ E3.1.29. 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. She adequately discussed why the disqualifying conduct established under Guidelines F and E was not mitigated.

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