

KEYWORD: Guideline F

DIGEST: Applicant's reliance on language from the interview summary is misplaced. The language summarizes her answers to interviewer. It does not represent the interviewer's opinion of Applicant's security worthiness. Adverse decision affirmed.

CASENO: 11-08063.a1

DATE: 07/19/2013

DATE: July 19, 2013

In Re:)
)
)
-----) ISCR Case No. 11-08063
)
)
Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 8, 2012, 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 May 1, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was denied due process; whether the Judge failed to consider all of the evidence; whether the Judge failed properly to apply the pertinent mitigating conditions; whether the Judge failed properly to apply the whole-person factors; and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has worked for a Federal contractor since 2000. Married for 23 years, she has three sons, two of whom are in college and the other in high school. The record does not disclose whether the sons in college reside at home. In 2007, Applicant and her husband invested money from an inheritance and an employment bonus in real estate. Subsequently, Applicant's husband lost his job due to a downturn in the construction industry in which he was employed. He regained employment in 2009 and has been employed since.

The SOR alleged three delinquent debts, all arising from real estate transactions. The Judge resolved two of the allegations in Applicant's favor. Regarding SOR ¶ 1(a), however, which addressed a delinquent equity loan on Applicant's principal residence, the Judge found against Applicant. This home equity loan was for \$196,000. The record contains inconsistent evidence as to the amount of the delinquency, a credit report stating that the amount is \$35,285 and Applicant contending that it is \$10,800. She has not made regular payment since January 2011, and her efforts to obtain an account balance have not yet resulted in a resolution of her dispute as to the amount in arrears. The creditor accepted an offer by Applicant to accept \$100 a month for six months, after which the creditor will reevaluate Applicant's financial condition with a view toward increasing the monthly payments. The debt has been transferred to another creditor, and Applicant has requested a payoff amount.

Applicant provided financial statements prepared in 2012 and 2013 that contain inconsistent information about her net monthly remainder after payment of her various expenses. The Judge noted that the record is silent on some matters pertinent to Applicant's financial situation, for example the extent to which Applicant's sons are self-supporting and circumstances underlying Applicant's installment payments on Federal and state income taxes.¹ The Judge also found that Applicant's bank statements do not contain sufficiently detailed information about Applicant's miscellaneous expenses so as to permit an accurate picture of her monthly remainder. Applicant has

¹Moreover, the record contains evidence that Applicant had two tax liens that were paid in 2009 (Item 5, Credit Report dated March 25, 2011) and that a \$3,428.35 debt to a state taxation department was satisfied through wage garnishment in 2011 (Item 4, Security Clearance Application).

had financial counseling. She stated that she has “reduced or eliminated all non-essential expenses,” such as entertainment, dining out, etc.

The Judge’s Analysis

The Judge concluded that Applicant’s financial problems raised security concerns under Guideline F. As stated above, she resolved two of the allegations in Applicant’s favor. However, regarding the home equity loan, the Judge concluded that Applicant had failed to meet her burden of persuasion as to mitigation. The Judge stated that, without more information about the current state of Applicant’s finances, she could not conclude that Applicant’s financial problems were behind her. She cited to a paucity of evidence concerning the extent to which Applicant may owe late fees regarding the sale of her home. She also found that it is unclear from the record which tax years underlie her monthly tax payments and that her monthly expenditures appear to be substantial. The Judge noted circumstances, such as Applicant’s husband’s unemployment, that were outside Applicant’s control. However, the Judge stated that the evidence was not sufficient to show that she acted responsibly in regard to her debts. The Judge also stated that, despite the receipt of financial counseling, Applicant had not demonstrated that her debt problems were under control. In the whole-person analysis, the Judge noted evidence favorable to Applicant, such as her excellent work record, her substantial income, and the effect her husband’s unemployment exerted on her finances. On the other hand, the Judge also noted that, despite Applicant’s income, she owes a lot of money and that the evidence is not sufficient to support a conclusion that Applicant has demonstrated financial stability.

Discussion

Applicant contends that Department Counsel conducted himself in an unfair and biased manner. We have read Department Counsel’s arguments in the File of Relevant Material (FORM) and find nothing therein that would persuade a reasonable person that Department Counsel had behaved unprofessionally. *See, e.g.*, ISCR Case No. 07-10865 at 2 (App. Bd. Nov. 18, 2008). Applicant argues that the processing of her case took too long, and she refers to matters outside the record that purport to show mistakes in the processing of her case. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Neither do we have jurisdiction to rule on DOHA’s pre-hearing interactions with Applicant. *See, e.g.*, ISCR Case No. 02-24479 at 4 (App. Bd. Jul. 14, 2003). The record does not support a conclusion that the manner in which Applicant’s case was processed prejudiced her ability to present evidence in mitigation. *See, e.g.*, ISCR Case No. 08-10170 at 2 (App. Bd. Jul. 8, 2011). We note that Applicant was notified of her right to submit matters in response to the SOR and in reply to the FORM and that she took advantage of both opportunities. There is nothing in the record to suggest that Applicant was denied the due process afforded her by the Directive. *See, e.g.*, ISCR 08-05348 at 2 (App. Bd. Apr. 2, 2009).

Applicant contends that the Judge did not consider evidence she submitted in her own behalf, citing to her answers to interrogatories and her responses to the SOR and to the FORM. She states in particular that the Judge did not consider evidence of her repayment plan. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-00542 at 2-3 (App.

Bd. Apr. 13, 2012). In fact, in the case before us, the Judge made findings about the repayment plan and addressed the plan in her analysis of Applicant's case. A Judge is not required to discuss all of the evidence in the record, which is a practical impossibility. Applicant's argument consists principally in disagreeing with the Judge's weighing of the evidence. However, given the record that was before the Judge, we find no reason to conclude that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record.

Applicant asserts that the record does not contain substantial evidence of any Guideline F disqualifying condition. When an applicant controverts an SOR allegation, the Government bears the burden of producing substantial evidence of that allegation. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." Directive ¶¶ E3.1.14; E3.1.32.1. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security-worthiness. *See, e.g.*, ISCR Case No. 10-00925 at 3 (App. Bd. Jun. 26, 2012). In this case, Department Counsel presented Applicant's answers contained in her security clearance application, her answers to DOHA interrogatories, her response to the SOR, and three credit reports. Applicant in turn provided numerous exhibits in response to the FORM. These documents support the Judge's material findings of security concern to the effect that Applicant became unable to meet her payments on her primary residence, that she failed to pay a home equity loan, that she defaulted on the mortgage on another piece of real property, and that her income was stretched to cover her payments of these and of other debts. These findings are sufficient to support the Judge's application of three of the Guideline F disqualifying conditions, 19(a),² (c),³ and (e).⁴ The Judge was not required explicitly to address all of the disqualifying conditions nor to address each clause in the explication of the Guideline F concern found in Directive, Enclosure 2 ¶ 18. Rather, she was required to address those criteria reasonably raised by the evidence that was before her. We find no error in her treatment of the disqualifying conditions.

Applicant argues that the Judge's application of the mitigating conditions was in error. We have considered the Judge's analysis of Applicant's financial circumstances and find no reason to disturb the Judge's conclusion that Applicant had failed to meet her burden of persuasion regarding mitigation. She also contends that the Judge's whole-person analysis failed to address each of the factors described in Directive, Enclosure 2 ¶ 2(a)(1). However, a Judge is not required to address each of the whole-person factors in every case. Rather, a Judge must consider an applicant's circumstances in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 11-08546 at 4 (App. Bd. Feb. 27, 2013). We find no basis to conclude that the Judge's whole-person analysis was deficient, given the record before her.

²Directive, Enclosure 2 ¶ 19(a): "inability or unwillingness to satisfy debts[.]"

³Directive, Enclosure 2 ¶ 19(c): "a history of not meeting financial obligations[.]"

⁴Directive, Enclosure 2 ¶ 19(e): "consistent spending beyond one's means, which may be indicated by . . . high debt-to-income ratio . . ."

Applicant cites to a statement at the end of her interview summary, included in Item 7, Answers to Interrogatories, to the effect that there is no one who will question Applicant's willingness or ability to pay her debts. This statement merely summarizes Applicant's answers to the interviewer's questions. It does not represent the interviewer's opinion of Applicant's security worthiness. *See, e.g.*, ISCR Case No. 10-09595 at 2 (App. Bd. Feb. 3, 2012). Applicant challenges the Judge's treatment of her tax payments, noting that her tax debts were not raised in the SOR. Conduct not alleged in an SOR may be considered for a variety of purposes, such as evaluating an applicant's case for mitigation as well as part of a whole-person analysis. *See, e.g.*, ISCR Case No. 09-08108 at 6 (App. Bd. Feb. 15, 2011). We conclude that the Judge addressed Applicant's tax payments in the proper context.

We have considered the entirety of Applicant's appeal brief in light of the record as a whole. We conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "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). *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