

KEYWORD: Guideline F

DIGEST: The Judge concluded that Mitigating Condition ¶ 20(b) partially applied. He concluded that Applicant had not acted responsibly under the circumstances, but did not specify how Applicant failed to act responsibly. A Judge’s decision must set forth findings and conclusions with sufficient specificity and clarity that the parties and the Board can discern what the Judge is finding and concluding. Adverse decision remanded.

CASENO: 11-09742.a1

DATE: 07/08/2013

DATE: July 8, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-09742
)	
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 October 19, 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 that the case be decided on the written record. On April 29, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran 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 decision is arbitrary, capricious, or contrary to law. For reasons explained in this decision, the Board remands the Judge's unfavorable security clearance decision for corrective action.

The Judge found: Applicant is 31 years old. Applicant had periods of unemployment after she was discharged from the military in 2005. She was unable to pay all her bills, and a number of debts became delinquent. She is behind on seven debts totaling in excess of \$31,000. Three debts that had been delinquent have been paid. She had a garnishment action initiated against her for one of the debts. In August 2012 she indicated that upon completion of her wage garnishment, she would contact her creditors as funds become available. She did not indicate that she received financial counseling.

The Judge concluded: Applicant's unemployment was beyond her control. To be fully applicable, AG ¶ 20(b)¹ also requires that the individual act responsibly under the circumstances. The total amount of the six debts that Applicant admitted owing is more than \$31,000. She did not establish how those debts would be resolved. There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. Her financial issues are recent and ongoing. No determination can be made that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. Security concerns remain despite the presence of some mitigation.

Applicant disputes the Judge's finding that she owes a \$100 debt to a utility company. She indicates that she has reviewed three credit reports and the debt is not listed on any of them. She asserts that she will either contest or settle the debt if it can be confirmed that the debt is hers. Applicant's representations regarding the utility account constitute new evidence, which the Board cannot consider. Directive, ¶ E3.1.29. Moreover, the Judge's finding that Applicant has the outstanding debt in question is established by two credit reports in the evidentiary file. It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14. *See, e.g.*, ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). Applicant has failed to establish error.

Applicant argues that she indicated that she has plans to contact her creditors and to make payment arrangements to settle the accounts, but that this statement was overlooked or ignored by the Judge. 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). Applicant fails to rebut this presumption. Moreover, in his findings of fact, the Judge mentioned

¹ “[T]he conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]”

a statement by Applicant wherein she said that upon the completion of her wage garnishment, she would contact her creditors, “as funds become available.” Decision at 3. The Board concludes that this finding establishes that the Judge was aware that Applicant had a desire to pay off her delinquent debts. Applicant has failed to establish error.

Applicant asserts that she has not, over the course of her employment, used her position or access to classified material to obtain illegal funds, nor has she been in contact with any party that has ever asked her to leak sensitive information for monetary gain. These facts, while not irrelevant, do not undermine the Judge’s analysis. The government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. *See* ISCR Case No. 08-00435 at 3 (App. Bd. Jan 22, 2009).

Applicant states that she is not unwilling to pay her debts, and her financial difficulties were a result of periods of unemployment from which she was attempting to recover. The Board construes this as an argument that the Judge should have applied AG ¶ 20(b) in her favor. The Judge concluded that this mitigating condition partially applied. He acknowledged that Applicant’s periods of unemployment were beyond her control. He went on to state that to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Given the fact that he only partially applied the mitigating condition, it appears the Judge concluded that Applicant did not act responsibly under the circumstances. The Judge’s decision is problematic, however, in that his analysis does not include a discussion as to how, specifically, Applicant has failed to act responsibly. A Judge’s decision must set forth findings and conclusions with sufficient specificity and clarity that the parties and the Board can discern what the Judge is finding and concluding. *See, e.g.,* ISCR Case No. 99-0018 at 2-3 (App. Bd. Dec. 6, 1999). In this case, the Judge’s citation of the second prong of AG ¶ 20(b) without relating it to any specific facts in the case does not provide the parties and the Board with a basis to conclude whether the Judge engaged in reasoned decision making. This error of omission also leaves the Board unable to discern whether the Judge weighed the record evidence in a reasonable, common sense manner.

On remand, the Judge should issue a new decision after applying the second prong of AG ¶ 20(b) to the specific facts of the case.

Order

The decision of the Judge is REMANDED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Member, 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