

KEYWORD: Guideline K

DIGEST: The Judge’s material findings of security concern were supported by substantial evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence. The Appeal Board cannot consider new evidence on appeal. Security-significant conduct that occurred after Applicant had been placed on notice that her finances were of concern supports the Judge’s adverse decision. Adverse decision affirmed.

CASE NO: 11-10405.a1

DATE: 10/28/2013

DATE: October 28, 2013

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In Re:)	
)	
-----)	ISCR Case No. 11-10405
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

G. John Dezenberg, Jr., Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 15, 2013, 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 hearing. On July 29, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 the Judge's findings of fact contained errors and whether the Judge's overall adverse decision was arbitrary, capricious, and contrary to law.

The Judge's Findings of Fact

Applicant is an employee of a Defense contractor. She has worked for her employer since late 2010. She has a bachelor's degree. Twice divorced, Applicant has two daughters, the older of whom serves in the U.S. military. Applicant has held a security clearance since the late 1980s without incident.

In 2007, Applicant filed for Chapter 13 bankruptcy protection, following her second divorce. In 2008, the bankruptcy was converted to Chapter 7 and, early the next year, Applicant was granted a discharge of her debts. Applicant's SOR lists several delinquent debts. Applicant has attributed them to the financial consequences of her divorce and to a period of unemployment. Applicant worked with a debt consolidation company to resolve her debts, and she made regular payments to the company in pursuit of this goal. A court entered a judgment against Applicant for a medical debt that the debt consolidation company had failed to address. Applicant terminated her relationship with the company prior to the hearing.

The Judge found that several of the SOR debts had been discharged in bankruptcy and that others were repeats of a single debt. The Judge resolved these debts in Applicant's favor. However, the Judge found against Applicant on eight others, including a judgment for \$3,000, a past-due account for \$1,488, and a \$9,329 charged-off account resulting from a vehicle loan. The total amount of delinquent debt that the Judge found against Applicant was nearly \$16,000. In June 2013, Applicant filed again for Chapter 13 bankruptcy protection, her petition showing assets of \$21,881 and liabilities totaling \$55,477.¹ This bankruptcy petition lists some of the debts alleged in the SOR, including several that the Judge resolved against Applicant.

Applicant enjoys a good reputation for her professionalism and trustworthiness. Her work performance evaluation states that she met or exceeded expectations.

The Judge's Analysis

The Judge concluded that Applicant's financial circumstances raised concerns under Guideline F. He resolved several of these in Applicant's favor, in light of evidence that the debts had been resolved through bankruptcy or were repetitive of others. He noted that Applicant's

¹This second bankruptcy filing occurred after the date of the hearing. Obviously, it was not alleged in the SOR. However, conduct not alleged can be considered for a number of reasons, including evaluating an applicant's case for mitigation and/or evaluating the extent to which the applicant has demonstrated rehabilitation. *See, e.g.*, ISCR Case No. 11-03664 at 5, n. 2 (App. Bd. Aug. 15, 2013).

finances had been affected by circumstances outside her control, such as her marital difficulties and her unemployment. This latter event exerted “a significant impact on her financial situation.” Decision at 10. However, the Judge also cited to evidence that Applicant had continued to open and default on debts after she obtained her current job and after she had submitted to a clearance interview in 2011 that focused on her debt problems.

The Judge stated that Applicant’s debts were ongoing and continued to cast doubt upon her current reliability, trustworthiness, and good judgment. In the whole-person analysis, the Judge noted evidence of Applicant’s good reputation among friends and co-workers and evidence that she had experienced financial setbacks beyond her control. However, the Judge concluded that she had failed to demonstrate financial responsibility.

Discussion

Applicant alleges that some of the Judge’s findings are in error, stating that the Judge treated some debts as ongoing even though Applicant had resolved them. For example, she claims that one of the debts that the Judge found against her had been paid in full and that another had been discharged in her prior bankruptcy.

We have examined the Judge’s findings in light of the record as a whole. Regarding one of the debts, the Judge noted that some evidence existed that could mean that the debt had been resolved. However, the Judge found this evidence to be inconclusive, which was a reasonable interpretation of the record that was before him. Even if the Judge’s findings contained errors, they did not likely affect the overall decision. Applicant has not cited to any harmful error likely to change the outcome of the case. The Judge’s material findings of security concern are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013).

Applicant cites to evidence favorable to her, such as her having held a clearance for several years without incident. This was something the Judge was required to consider, along with all the other evidence in the record. The Judge made findings about Applicant’s security record and about other laudatory matters. The gravamen of his decision was that Applicant had failed to demonstrate that her security-significant conduct was behind her. The Government is not precluded from making an adverse clearance decision despite an applicant’s good security record. *See, e.g.*, ISCR Case No. 06-23613 at 4 (App. Bd. Feb. 4, 2013). Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-06026 at 2 (App. Bd. Mar. 5, 2013).

In support of her appeal, Applicant has submitted evidence from outside the record, for example, regarding sanctions a court imposed on her bankruptcy attorney and regarding improprieties committed by the owner of a debt settlement company that she was using. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant has challenged the Judge's treatment of the mitigating conditions. Examining the Decision in light of the entire record, we find no error in the Judge's analysis. Evidence that security-significant conduct occurred after Applicant had been placed on notice that her finances were of security concern is relevant and supports the Judge's adverse holding. *See, e.g.*, ISCR Case No. 11-10127 at 2 (App. Bd. Jul. 9, 2012) (The applicant's failure to address a delinquent tax debt for a year after having been placed on notice that the debt was of security concern cited by the Judge as a reason to deny the applicant a clearance). 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