

KEYWORD: Guideline F

DIGEST: The Judge offered a reasonable explanation as to why the disqualifying conduct was not mitigated. Adverse decision affirmed.

CASENO: 14-03910.a1

DATE: 06/24/2015

DATE: June 24, 2015

In Re:)
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 -----) ISCR Case No. 14-03910
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)
 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 8, 2014, 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 March 31, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings: Applicant is 49 years old. Her SOR listed 12 delinquent debts in the amount of \$21,000. Three of the SOR allegations concern the same debt. Since 2002, Applicant was employed for three periods totaling about 13 months. One of the periods began in 2004 when she left her job because she "needed a break." Decision at 2. Only two of Applicant's ten listed debts have been resolved. Applicant did not provide sufficient proof that she was legitimately disputing debts, had paid debts, or was taking steps to address debts.

The Judge reached the following conclusions: Applicant has multiple debts that remain unresolved. Her unemployment and accident injuries were the result of conditions beyond her control and these contributed to her financial problems. Nonetheless, she failed to establish that she has acted responsibly under the circumstances in addressing her financial problems. No evidence was presented that she attempted to enter into repayment agreements with any creditors. No evidence of financial counseling was presented. The favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Following the "clearly consistent with the national interest" standard, doubt about granting Applicant a security clearance must be resolved in favor of national security.

Applicant asserts that incorrect or outdated information in the Government's "source data" influenced the Judge's unfavorable decision. Her appeal statements are based on information she submitted for the first time on appeal, and this information is not part of the record below. The Board cannot consider new evidence on appeal. Directive, ¶ E3.1.29.

Applicant argues that the credit report evidence relied on by the Judge was inaccurate. She has failed to establish error. There is no presumption of error below. Also, 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 of the Directive for pertinent allegations. At that point, the burden shifts to Applicant to establish either that she is not responsible for the debt or that matters in mitigation apply. *See, e.g.*, ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). Applicant offered no evidence challenging the accuracy of the credit reports while the record was open.

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).

A review of the Judge’s decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in his analysis. The Judge found in favor of Applicant as to a number of the Guideline F allegations. However, the Judge offered a reasonable explanation as to why the disqualifying conduct under Guideline F 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 the 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 is AFFIRMED.

Signed: Michael Ra’anan
Michael 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