

KEYWORD: Guideline F

DIGEST: The presence of some mitigating evidence does not alone compel a Judge to make a favorable security clearance decision. Adverse decision affirmed.

CASENO: 14-05023.a1

DATE: 11/25/2015

DATE: November 25, 2015

In Re:)
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 -----) ISCR Case No. 14-05023
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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 December 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 August 31, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 is 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 43 years old. He admitted sixteen out of nineteen debts alleged in the SOR, totaling approximately \$41,000. He became excessively indebted due to a marital separation in 2009 that led to a divorce two years later. In the divorce decree, Applicant was awarded many of the financial accounts. He states he contacted many of his creditors about his situation, but many of them would not work with him. He is now indebted to twelve creditors for approximately \$19,000 in delinquent debt. Applicant blames the dissolution of his marriage and the resulting accumulation of many of the marital debts for his financial problems.

Applicant has provided some documentary evidence to show that two judgments and five other delinquent debts have been paid off or are being resolved. In regard to twelve other debts, he has failed to submit any documentary evidence to show that he is addressing them.

The Judge reached the following conclusions: Although his marital separation and divorce began Applicant's financial problems, it is not clear from the record that, since his divorce, he has acted responsibly and reasonably under the circumstances. Given the extensive nature of his indebtedness, it will take some time before Applicant is even close to being debt free. With regard to twelve of his nineteen debts, there is no evidence of any efforts to repay these debts, be it prior to or after the receipt of the SOR. Without more, the Applicant has failed to establish that he is fiscally responsible. Applicant has not met his burden of proving that he is worthy of a security clearance.

Applicant argues that the Judge did not take into account the large amount of debt that he has paid or resolved since his divorce. He asserts that, although he is not debt free, he has strived to correct all debts that became his responsibility as a result of his divorce. He emphasizes his military service record and his employment history and asserts that, under the whole-person concept, he should be considered a person of integrity. Applicant's arguments do not establish error on the part of the Judge.

Applicant's appeal submission contains assertions and documents that were not part of the record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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). Applicant's debt payment efforts and his favorable military and civilian employment record was evidence that the Judge was required to consider. However, such evidence does not mandate a favorable decision. Applicant's arguments are 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 made sustainable findings that Applicant had a lengthy and serious history of not meeting financial obligations, and that he had not sufficiently demonstrated that he had acted responsibly with regard to his debts, despite the mitigating factor of his divorce. Central to the Judge's analysis was her finding that, as to twelve of Applicant's nineteen debts, there was no evidence in the record that he had even begun to address them. This finding, and the resulting conclusion that Applicant had not demonstrated reasonable behavior with regard to his debts, are supported by the record. The Judge adequately discussed why, given the state of the record, the disqualifying conduct established 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 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 Judge's decision 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board