

KEYWORD: Guideline F

DIGEST: Applicant contends that the Judge was biased against her. While the Judge questioned Applicant throughout the hearing, sometimes a bit sharply, it appears to have been for the purpose of clarifying the record and assisting Applicant in articulating which debts she had paid. We find nothing in the record that would likely persuade a reasonable person that the Judge lacked the requisite impartiality. Adverse decision affirmed.

CASE NO: 15-00022.a1

DATE: 07/11/2016

DATE: July 12, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-00022
)	
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 June 22, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended)

(Directive). Applicant requested a hearing. On April 25, 2016, after the hearing, 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 the Judge was biased against her; whether the Judge denied her an opportunity to present evidence; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was unemployed from mid 2009 to late 2010, and from late 2012 to late 2013. Applicant's husband was unemployed due to a serious medical condition from 2009 to 2013. Applicant and her husband are both working now.

In 2014 Applicant completed her security clearance application (SCA). Applicant answered "no" to Question 26 requiring her to disclose any financial delinquencies. When Applicant was interviewed by an Office of Personnel Management (OPM) investigator in 2014, she indicated that she had some previous financial difficulties but did not feel there were any accounts that needed to be reported on the SCA. At the DOHA hearing, Applicant said she did not know why she told the OPM investigator that she did not feel she needed to report any delinquent accounts. Applicant testified that she completed the SCA at a library and only had an hour to finish it. Applicant further testified that she answered "no" to all the questions concerning financial difficulties and delinquent debts and attempted to go back and change her answer on the SCA, but the program would not let her do so. She stated that she was concerned that the program would erase all her previous answers. Applicant testified that she regretted her mistake; and at the time she completed the SCA, she was aware that she had delinquent debts. Applicant stated that many of the debts were incurred when her husband became ill in 2009 and she had been attempting to resolve her financial situation since then.

The Judge's Analysis

The Judge found Applicant has numerous delinquent debts that remain unresolved. Applicant did not provide sufficient evidence to show she has an established track record of being fiscally responsible. Applicant's explanations as to why she did not disclose her numerous debts on her 2014 SCA were contradictory. Applicant's omissions of her delinquent debts were deliberate. The Judge noted inconsistencies between Applicant's explanation of her SCA answer during the security clearance interview, and her explanation of same during her hearing testimony. The Judge concluded that the record left her with doubts about Applicant's fitness for access to national security information. Although the Judge found in Applicant's favor on five of the debts alleged in the SOR, she found against her on the other seven debts, one of which totaled over \$40,000.

Discussion

Applicant contends that the Judge was biased against her. She states that the hearing was an interrogation and the Judge upset her by making "constant insinuations." Applicant suggests that

she felt precluded from offering mitigating evidence such as the reason for her financial difficulties, *i.e.*, her husband's illness, the fact that she has paid off the debts, and her high credit rating. A party who argues that a Judge is biased has a "heavy burden of persuasion" on appeal. *See, e.g.*, ISCR Case No. 14-06440 at 3 (App. Bd. Jan. 8, 2016) (citing ISCR Case No. 14-03108 at 3 (App. Bd. May 20, 2015)). Applicant states that she has a spotless record but admits she made a mistake by answering "no" to her financial delinquencies on her SCA. While the Judge questioned Applicant throughout the hearing, sometimes a bit sharply, it appears to have been for the purpose of clarifying the record and assisting Applicant in articulating which debts she had paid. We find nothing in the record that would likely persuade a reasonable person that the Judge lacked the requisite impartiality. Therefore, we conclude that Applicant has not met her heavy burden of persuasion.

In her appeal, Applicant includes assertions that are outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Our examination of the record does not support Applicant's suggestion that the Judge prevented her from presenting evidence. In fact, Applicant offered numerous documents, all of which were admitted. Tr. at 22-30, 31. In addition, the Judge questioned her not only regarding the allegations in the SOR but also about her biographical information, family circumstances, her education, her husband's illness, her periods of unemployment, etc., all of which were relevant to a whole-person analysis. Tr. at 24-28. At the close of the hearing, she gave Applicant an opportunity to provide any other information that she thought relevant. Tr. at 84. Applicant subsequently submitted further documentation and the Judge admitted the documents and considered them. We find no reason to conclude that Applicant was denied an opportunity to present evidence.

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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Member, Appeal Board