

KEYWORD: Guideline F

DIGEST: Applicant correctly identifies some minor errors in the Judge's decision but they are harmless in that it is unlikely that the result of the Judge's decision would have been different without the errors. Adverse decision affirmed.

CASENO: 08-06582.a1

DATE: 04/03/2009

DATE: April 3, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-06582
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 10, 2008, DOHA issued a statement of reasons 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 January 30, 2009, after the hearing, Administrative Judge Joan Caton Anthony 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.

Specifically, Applicant contends that the Judge made factual errors. Applicant also maintains that the Judge did not consider all the record evidence and did not give sufficient weight to Applicant’s evidence of mitigation.

The Judge made the following pertinent factual findings: In March 2007, after almost three years at a job, Applicant was terminated for improperly obtaining and releasing confidential information about a coworker. Applicant was unemployed from March until May 2007. Applicant worked from May until August 2007, but was terminated because her job location changed and Applicant did not have adequate transportation to reach the new location. Applicant was then unemployed from August to September 2007, when she obtained her current job.

Applicant purchased her home in February 2004. Applicant’s mother and sister along with her sister’s two children live with Applicant. Applicant’s mother and sister together pay \$2,000 per month rent, and they pay for groceries and utilities. Applicant’s mortgage went into default in September 2007, at the same time that she began her present job. To avoid foreclosure, Applicant entered into a default forbearance agreement with her mortgage company under which she paid a total of \$9,000 on November 1, 2008, and agreed to pay increased mortgage payments. At the hearing, Applicant provided documentation that she had made mortgage payments under the agreement in November and December 2008. Before the close of the record, Applicant provided documentation for three payments on her delinquent mortgage in March, May, and June 2008.

Between 2004 and 2007, Applicant accumulated approximately \$80,000 in credit card debt. She used the credit cards to repair and renovate the house. Applicant stopped paying her credit card bills when she was unemployed in 2007. Applicant failed to pay her credit card delinquencies after she began working again. Applicant admitted eight delinquent credit cards alleged in the SOR ranging in size from \$2,000 to \$27,865. Applicant sought credit counseling in September 2007, but did not make payments on her credit card debt until she signed an agreement with a debt repayment service in September 2008. Since the first eight months of payments under the agreement go almost entirely for the repayment service’s fee, Applicant has still paid almost nothing toward her credit card debt.

Applicant also owes more than \$1,000 to her state unemployment commission. The debt arose in 2007. She verbally agreed to pay \$200 per month for five months, beginning in January 2009, and had made no payments at the time of the hearing. Applicant's total take-home pay (including the rent payments by relatives) minus the debt payments discussed during the hearing (first and second mortgage, debt repayment service, and the payment to the unemployment commission) leaves a remainder of \$456. A Personal Financial Statement dated August 1, 2008, which also included other monthly expenses, showed a remainder of only \$132.37.

In her appeal brief, Applicant identifies a number of statements in the Judge's decision that she considers to be in error. Applicant states that the Judge's decision indicates that Applicant documented three mortgage payments in her post-hearing submission, whereas Applicant notes there were five payments. Applicant is correct; there are five payments, which appear to be part of at least two earlier default forbearance agreements. There is at least some support in the record for other statements Applicant identifies as error.¹ However, Applicant has not identified any harmful error. In light of Applicant's financial situation as a whole, it is unlikely that the identified statements, if changed as Applicant suggests, would lead to a different result in Applicant's case. *See, e.g.*, ISCR Case No. 06-20062 at 2 (App. Bd. Jul. 15, 2008).

Applicant also maintains that the Judge did not consider all the record evidence. There is a rebuttable presumption that the Judge considered all the record evidence, unless the Judge specifically states otherwise. Furthermore, there is no requirement that the Judge mention or discuss every piece of record evidence when reaching a decision. *See, e.g.*, ISCR Case No. 04-08134 at 3 (App. Bd. May 16, 2005). Applicant has not demonstrated error in this regard.

Applicant also contends that the Judge did not give adequate weight to the her evidence of mitigation.² 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*. 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. 07-00553 at 2 (May 23, 2008).

¹In identifying alleged errors, Applicant makes statements that extend beyond the evidence in the record and thus constitute new evidence. The Board cannot consider new evidence. *See* Directive ¶ E3.1.29.

²Applicant believes that the Judge should have further developed evidence of mitigation. In DOHA proceedings, Applicant has the responsibility to present all the evidence she wants the Judge to consider and has the ultimate burden of persuasion as to obtaining a favorable security clearance decision. *See* Directive ¶ E3.1.15.

Order

The Judge's decision denying Applicant a security clearance is affirmed.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board