

KEYWORD: Guideline F

DIGEST: An ability to argue for a different interpretation of the evidence is insufficient to demonstrate that the Judge weighed the evidence in a manner that arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 10-03598.a1

DATE: 10/10/2012

DATE: October 10, 2012

In Re:)
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 -----) ISCR Case No. 10-03598
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 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Richard L. Morris, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 7, 2011, DOHA 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 April 20, 2012, after the hearing, Administrative Judge Juan J. Rivera 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 failed to consider record evidence favorable to Applicant; whether the Judge mis-weighed the evidence; whether the Judge failed to perform an adequate credibility determination; whether the Judge’s application of the mitigating conditions was error; and whether the Judge failed properly to apply the whole-person factors. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a project manager for a Government contractor. She has a Bachelor’s degree and is working on a Master’s. She served on active duty with the U.S. Marine Corps during the early 1990s. She possessed a Secret clearance during most of her military service and was granted an interim clearance in 2003. There have been no security incidents or concerns regarding her access to classified information.

After leaving the Marines, Applicant was unemployed for several months and also experienced some periods of part-time employment. She has been working full time since the early 2000s. Applicant has stated that her income has risen from \$55,000 per year in the mid-2000s to over \$100,000 a year in 2012. In 1997, she filed for Chapter 13 bankruptcy protection, and her debts were discharged in the early 2000s.

Since her bankruptcy discharge, Applicant has had significant delinquent debts. These debts are for such things as a mortgage loan foreclosure, credit cards, and medical treatment. One of the reasons that she fell behind in her payments is that she used credit cards for paying day to day expenses. Additionally, she was in a car accident and, due to undergoing a medical procedure, had difficulty making payments on her debts.

The Judge found that Applicant had settled or established repayment plans for many of the debts alleged in the SOR and that the foreclosure sale had satisfied her delinquent mortgage debt. He also found that two of the SOR debts were duplicates of each other. The Judge found that Applicant had made payments by check for a credit card debt listed as SOR ¶ 1(i).¹ Four of these checks were returned due to insufficient funds. Additionally, Applicant has not made any payment on this account since September 2011.

Applicant submitted documents after the hearing but prior to the close of the record. She altered the account statement pertaining to the debt listed at SOR 1(i) by deleting entries showing

¹This allegation reads as follows: “Your interrogatory response dated October 25, 2011, shows several payments made toward your debt with [creditor] were returned due to insufficient funds.”

that she had issued checks without sufficient funds to cover them. She also altered the statement by deleting information about the last payment made, her account balance, the interest which had accrued on the account, and other charges. In a footnote, the Judge acknowledged that these alterations were not alleged in the SOR. However, he stated that he was considering them on the issues of credibility, mitigation, rehabilitation, the whole-person analysis, etc. Decision at 4, note 3. *See* ISCR Case No. 09-06771 at 2-3 (App. Bd. Jan. 4, 2011).

Applicant enjoys an excellent reputation for her integrity, trustworthiness, and work performance, both in the military and in her current job. Her supervisors recommend her for a security clearance.

Applicant's budget shows an average monthly income of \$8,300, with expenses of \$2,120 and payments of \$3,310 to creditors. Applicant's evidence also shows \$133,416 in consumer credit, \$72,034 in student loans, \$62,000 on a second mortgage and \$474,188 on her current home mortgage. The Judge stated that Applicant's debt payments are relatively small given the size of her debt load. He found that, after the hearing, Applicant had attended financial counseling.

In the Analysis, the Judge concluded that Applicant's circumstances raised security concerns under Guideline F. The Judge noted that Applicant had taken action to bring some of her debts under control, through settlement, repayment, etc, and that she had received financial counseling. However, he noted Applicant's significant debt load, her relatively minimal payments on her student loan and credit cards, and her having skipped monthly payments or, on occasion, having paid less than the agreed amounts. The Judge cited to his finding that Applicant had altered one of her documents, deleting information harmful to her. In light of this finding, the Judge concluded that Applicant's "promises to pay her financial obligations and to resolve her financial problems in the near future are not credible." Decision at 7-8. Although he resolved most of the SOR allegations in Applicant's favor, he found against Applicant regarding SOR ¶ 1(i).

Applicant cites to record evidence, such as her character references, her having held a security clearance without incident, and her testimony and other evidence regarding debt payment. She argues that a Judge cannot ignore significant record evidence that a reasonable person would expect to be taken into account in reaching a fair decision. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). In the case before us, the Judge made findings based on the cited evidence and discussed them in his Analysis. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Applicant's argument appears to be merely a disagreement with the Judge's weighing of the evidence. However, an ability to argue for a different interpretation of the evidence is not sufficient to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-03433 at 3 (App. Bd. Mar. 13, 2012).

Applicant argues that the Judge made no finding that she was not credible, nor did he give any reason to believe that her evidence was implausible or inconsistent with other evidence. Accordingly, she argues that the Judge's adverse decision is not consistent with his treatment of the evidence, viewed as a whole. However, as stated above, the Judge made findings about Applicant

apparently having deleted significant information from her account statement regarding SOR ¶1(i), findings which Applicant has not challenged on appeal. These findings, along with others regarding Applicant's outstanding debt load and her relatively minimal payment amounts, support the Judge's conclusion that Applicant's promises to resolve her financial difficulties lacked credibility.

Although Applicant has challenged the Judge's handling of the mitigating conditions, we find no error therein. The Judge's conclusions regarding the applicability of the mitigating conditions flow logically from his unchallenged findings of fact and are sustainable. Moreover, the Judge's whole-person analysis complies with the requirements of Directive, Enclosure 2 ¶ 2(a), in that he considered the totality of Applicant's conduct in reaching his decision. *See, e.g.*, ISCR Case No. 08-09511 at 2 (App. Bd. Mar. 3, 2010).

The record supports a conclusion 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 Judge's adverse 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 Judge's adverse security clearance 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