KEYWORD: Guideline F

DIGEST: A judge is not required to discuss every piece of evidence. Adverse decision affirmed

CASENO: 11-08118.a1

DATE: 08/12/2013

DATE: August 12, 2013

In Re:	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
John V. Berry, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 19, 2012, 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 a decision on the

written record. On May 31, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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 Applicant was denied due process; whether the Judge failed to consider all of the evidence in the record; 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

The Judge found that Applicant has worked for his current employer since 2010. He has worked for other Defense contractors since 1999 and has held a security clearance since then. Applicant and his wife have been married since 1999. He was divorced from a previous marriage in 1987.

The SOR alleges a single delinquent debt, for a credit card account. The debt has been delinquent since early 2011. When interviewed about this debt, Applicant denied any knowledge of it. In answers to DOHA interrogatories, Applicant claimed that the debt was in the name of his current wife. He provided a letter from a collection agency to his wife regarding this debt. Applicant did not comply with a DOHA request for a personal financial statement. In response to the SOR, he did provide a letter from a debt resolution company representing his wife and addressing settlement negotiations. The account information in the two letters Applicant submitted does not match the information about SOR 1(a) in the credit reports contained in the File of Relevant Material (FORM).

The Judge's Analysis

The Judge concluded that the evidence supplied by the Government in the FORM was sufficient to raise security concerns under Guideline F. Regarding mitigation, the Judge concluded that Applicant had failed to meet his burden of persuasion. He stated that Applicant had failed to demonstrate that the debt is not his or that he had taken steps to resolve the debt. He also stated that, because Applicant did not provide the requested financial information, it was impossible for the Judge to assess the state of Applicant's finances.

In the whole-person analysis, the Judge stated that the evidence in the record was not sufficient to show that the debt was not Applicant's or that Applicant's finances do not raise reasonable doubts about his suitability for access to classified information.

Discussion

Applicant, who acted *pro se* in his response to the FORM, contends that he was not completely familiar with the DOHA process, although he did the best he could to submit evidence addressing the debt at issue here.

To the extent that Applicant is raising an issue of due process in connection with his self-representation, we note that he was advised in writing, both by Department Counsel as well as by a

DOHA paralegal, of his right to submit evidence in response to the FORM. The letter from the paralegal also advised him to give "careful attention" to the question of whether to seek the assistance of counsel or some other person. Moreover, Applicant was provided with a copy of the Directive, which contained detailed information about his rights and responsibilities.

The record demonstrates that Applicant was given sufficient notice of his rights. Moreover, he took advantage of those rights by submitting information in response to the FORM. Having decided to represent himself after having properly been advised of his rights, Applicant cannot fairly complain about the quality of his self-representation. *See, e.g.*, ISCR Case No. 10-02364 at 2 (App. Bd. Apr. 4, 2011). Applicant was not denied the due process afforded by the Directive.

Applicant contends that the Judge did not consider the evidence he submitted in response to the FORM. We note, however, that the Judge acknowledged Applicant's submission at the beginning of his Decision. A Judge is not required to discuss every piece of evidence, which is a practical impossibility.

Furthermore, the information that Applicant submitted appears to restate matters previously provided, for example, in answers to DOHA interrogatories. There is nothing in Applicant's response to the FORM that would necessarily suggest to a reasonable person that it should be explicitly discussed in the Decision.[1]

Applicant also cites to language at the end of his clearance interview summary to the effect that his financial circumstances do not pose a threat of blackmail. He argues that the Judge did not consider this evidence. The language to which Applicant draws our attention is a summary of Applicant's answers to the interviewer, not the interviewer's considered opinion of Applicant's security-worthiness. *See, e.g.*, ISCR Case No. 11-08844 at 3 (App. Bd. Jan. 10, 2013). Applicant offers an alternative interpretation of the record evidence, but he has not rebutted the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012).

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).

[1]In arguing this assignment of error, Applicant refers to the Judge's finding that the two letters he submitted did not match the information contained in the credit reports. This finding appears to be an error, at least as regards one of the letters. However, reading the decision and the record as a whole, we conclude that any effect this error had is nullified by the Judge's sustainable finding that the account is in fact a joint account. This error is harmless.

Order

The 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