

KEYWORD: Guideline F; Guideline E

DIGEST: An ability to argue for an alternative interpretation of the evidence is not sufficient to demonstrate error by the Judge. Other Hearing Office cases are not binding either on the Hearing Office or on the Appeal Board. Adverse decision affirmed.

CASE NO: 11-14425

DATE: 09/11/2013

DATE: September 11, 2013

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In Re:)	
)	
-----)	ISCR Case No. 11-14425
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Corey R. Williams, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 13, 2012, 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 June 26, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Rita C. O’Brien denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.¹

¹ The Judge made three favorable formal findings under Guideline F. Those findings are not at issue.

Applicant raised the following issue on appeal: whether the adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is 51 years old.

In 2007 Applicant decided to become a real estate investor. She purchased several properties and assumed more than \$1,000,000 in mortgage loans. The real estate market suffered a sharp decline. Two properties were subject to foreclosure proceedings. Applicant no longer owns any real estate and is not presently working. Applicant has had serious medical problems since December 2009. The record does not contain information regarding the amount of her medical bills or how they affected her finances.

In 2010 Applicant prepared a security clearance application which did not accurately reflect her financial situation. She has since given conflicting explanations for the false answers on the application.

The Judge's Analysis

The Judge concluded that Applicant's financial problems raised security concerns under Guideline F. The Judge concluded that two mitigating conditions were partly applicable to Applicant's overall financial situation. The Judge's application of the mitigating conditions was limited by Applicant's initial poor judgment and her inadequate responses to the situation as it developed.

The Judge also concluded that Applicant had not been forthright with the government. Although the Judge discussed two mitigating conditions, she ultimately concluded that they were not applicable.

Discussion

Applicant asserts that the Judge should have ruled in Applicant's favor through application of several Guideline F and Guideline E mitigating conditions and the whole person analysis. Applicant cites to favorable record evidence including: Applicant's work history, the history of the real estate market since 2007, Applicant's attempts at loan modifications and her work with attorneys. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). In the case currently under consideration, the Judge made detailed findings about Applicant's circumstances, including many of the items raised in the appeal brief. Her adverse decision was based upon Applicant's poor judgment both prior to and after the real estate market decline. Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither does her argument demonstrate that the Judge mis-weighed the evidence.

Applicant's arguments also constitute an alternative interpretation of the evidence. Such an interpretation is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 11-08507 at 4 (App. Bd. Jun. 7, 2013).

Applicant also cites to Hearing Office cases as persuasive authority. The Board gives such cases due consideration. However they are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 11-07810 at 2 (App. Bd. Aug 5, 2013).

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 Decision is **AFFIRMED**.

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

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board