

KEYWORD: Guideline F

DIGEST: The Judge’s material findings were supported by substantial record evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence. Even one unfavorable finding results in an adverse decision. Adverse decision affirmed.

CASE NO: 12-00723

DATE: 02/04/2014

DATE: February 4, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-00723
)	
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 14, 2013, 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 hearing. On December 18, 2013, 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 erred in some of her findings of fact 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 married for 11 years, divorcing in 1995. She has a 30-year-old son, who is incarcerated. He has seven children, and Applicant attempts to provide support for them by sending clothes and money. Applicant has a 28-year-old daughter, who lives with her. Her daughter has two children. The father of these children also lives with Applicant. He does not work, and the daughter works only part-time. Applicant's 19-year-old stepson, for whom she is the legal guardian, also lives with her. He neither works nor goes to school.

Applicant's SOR alleges eight delinquent debts. Applicant attributes her financial problems to her being the sole provider for the family and to a two-month period of unemployment in 2008. She also experienced financial problems because of a job-related move to another state.

The Judge resolved four of these eight debts adversely to Applicant. One of them was for a car loan. The car experienced mechanical problems, that the dealer fixed due to a warranty. However, it later developed other problems, and the dealer would not fix them. Applicant returned the car to the dealer, believing that she should not have to pay for the repairs. She does not intend to pay this debt.

Another debt, for \$8,182, resulted from Applicant's having moved from an apartment. Her apartment had been burglarized, and the police told her that it looked like the work of someone with access to the premises, insofar as there was no evidence of forced entry. Applicant did not provide a 30-day notice to the landlord. The landlord is attempting to collect the balance owed on the lease. After the hearing, Applicant provided copies of two receipts to show that she made some payments to this creditor. The document is illegible, but the Judge presumed the payments to have been for \$25 each.¹

Applicant has a delinquent debt for a loan she took out in order to pay her son's child support obligations. He has never reimbursed her for this expense. She was paying \$275 a month on this debt, but she stopped making payments. She has sent the creditor two payments of \$25 each, and she hopes that she can settle the debt when she receives a tax refund.

Finally, Applicant owes \$31,000 for a repossessed mobile home. She bought the home in 1998 and stopped making payments in 2003 because the lot fee became too expensive. She sent the creditor two payments of \$25 each and intends to begin sending payments of \$50. Although she claimed that her creditor had agreed to this amount, she submitted no corroboration for this assertion.

¹Applicant testified that the money orders were for \$25. Tr. at 53.

Applicant earns around \$56,000 to \$58,000 a year. She has neither credit cards, savings, nor money in the bank. She recently purchased a new car for \$22,000, claiming that her old one, a 2005 model, needed repairs. She states that she bought a new car because she could not finance the purchase of a used one. In 2009 or 2010, Applicant purchased a time share, at a cost of \$6,000. She pays \$132 a month on this time share. She has never used it, but she hopes to remarry some day and spend her honeymoon in it. Applicant also has a \$31,000 dental bill, resulting from injuries sustained in a car accident. She is repaying a loan to her father covering this debt.

Applicant has never had financial counseling. She states that when she has more money she will send it to her creditors. She does not have a budget. She is looking for a second job.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised Guideline F financial concerns. She resolved four allegations in Applicant's favor but, as stated above, resolved the remaining four against her. In doing so, the Judge cited to evidence of her various loans, her care for her family members, and other things showing that Applicant is financially overextended, with limited resources for debt resolution. The Judge also stated that Applicant has a history of making poor financial decisions, for example the time share. The Judge cited to Applicant's two repossessed vehicles and her repossessed home. She also noted that Applicant's efforts at debt resolution occurred after her clearance became a concern and after she had received the SOR. The Judge concluded that Applicant does not have a realistic plan for resolving her debts and that the record left her with doubts about Applicant's suitability for a security clearance.

Discussion

Applicant has challenged some of the Judge's findings of fact. She states that her debt to her former landlord is substantially less than the \$8,182 alleged in the SOR. She also claims to have resolved one additional debt to those the Judge had found. We note that the Judge did not make an explicit finding about the amount owed to the landlord, and the Judge did credit Applicant with some payment on this debt. It is not inconsistent for a Judge to enter an adverse conclusion regarding an allegation of delinquent debt despite having made findings to the effect that the amount owed may be less than that alleged in the SOR. After reviewing Applicant's appeal brief in light of the record as a whole, we conclude that the Judge's material findings of security concern are supported by substantial record evidence. *See, e.g.,* ISCR Case No. 11-08831 at 3 (App. Bd. Nov. 6, 2013).

Applicant has attached to her brief copies of documents that were included in the record, either as Applicant exhibits or as attachments to DOHA interrogatories. To the extent that Applicant is contending that the Judge failed to consider this evidence and/or mis-weighed it, she has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has she demonstrated that the Judge's weighing of the evidence was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 12-02141 at 2 (App. Bd. Nov. 13, 2013).

Applicant contends that, had the Judge's findings not contained what Applicant considers errors, the number of favorable findings would have exceeded the number of adverse ones, resulting in the grant of a clearance. However, any unfavorable finding, even only one of many alleged in an SOR, results in an adverse decision.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. We note her comments about Applicant having begun debt resolution only after having received the SOR. *See* ISCR Case No. 09-07551 at 4 (App. Bd. Mar. 1, 2011) (Timing of debt repayment is relevant in determining the extent to which an applicant has demonstrated mitigation). We also note the Judge's findings and comments about the extent to which Applicant appears to be financially overextended with no viable plan to get out of debt. 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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