KEYWORD: Guideline F

DIGEST: The Judge's findings that Applicant and her husband stopped making mortgage payments a year before she lost her job, and that she and her husband continued to live in the house without making payments or establishing a plan for debt resolution support the Judge's conclusion that there was insufficient mitigation to overcome the Government's security concerns. Adverse decision affirmed.

CASENO: 14-00251.a1

DATE: 10/10/2014

DATE: October 10, 2014

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
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 14, 2014, 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 July 30, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Noreen A. Lynch 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's findings of fact contained errors and whether the Judge failed properly to apply the mitigating conditions. Consistent with the following, we affirm the Judge's decision.

The Judge's Findings of Fact

Applicant is a consultant for a Defense contractor, for whom she has worked since late 2010. She has worked in her career field for 20 years. Married with one child, she has a bachelor's degree.

Applicant's financial problems began when she and her husband lost their employment. Applicant's husband lost his job in 2008, and Applicant lost hers in 2009. Applicant gained employment in April 2010, but her husband did not find a job until 2012. They could not make their mortgage payments, so they submitted reduced payments. However, these payments stopped in 2008. At that time, Applicant earned $85,000 annually. The couple stopped making their mortgage payments a year before Applicant lost her job.

Applicant and her husband bought their house in the late 1990s. They had a monthly mortgage payment of $1,500. After Applicant lost her job, they sought help from the lender, submitting an application for a loan modification. Nevertheless, the lender foreclosed. The lender claimed that it did not receive the modification application. Applicant and her husband filed for Chapter 13 bankruptcy protection, but they withdrew the petition. They have continued to live in the house. Applicant stated that they continued negotiating through a company to whom the original lender had transferred the loan. This company requested new documentation.

Applicant's house became the subject of a lawsuit to reform an error in the deed and deed of trust. Applicant submitted various motions seeking postponement of the trial, although the Court eventually entered a Consent Order reforming the deed. Applicant contends that the Court tied a loan modification to the signing of the Order, although she submitted no corroboration.

The loan has been transferred several times. In April 2013, Applicant and her husband submitted a loan modification package to the current holder of the loan. The following July, Applicant received notice of a $196,064 loan balance, with the next payment being $1,974.13. Applicant requested validation of the amount.

In 2014, Applicant sought help from a credit assistance company to look into the loan modification that was purportedly approved in the consent order. There is no evidence in the record to show that an approved loan modification exists. The Judge stated that Applicant had provided a lot of documentation, but that the evidence presents "no clarity" regarding the actual status of the loan modification process. Decision at 3. Applicant states that she and her husband have set aside money to approximate the monthly mortgage payments, though they did not provide corroboration. They also want a clean credit report before they begin making payments. "It has been six years

without a resolution and Applicant stated that perhaps she may sue the mortgage servicing companies for fraudulent handling of claims." *Id*.

Applicant earns about $115,000 a year. She claims that she has about $40,000 to $50,000 set aside to pay for the past-due mortgage amount. She is current with her bills. Applicant is in the processing of repaying an outstanding tax obligation for $3,000. She believes that she currently owes $1,200 on this tax debt.[1]

The Judge's Analysis

The Judge concluded that Applicant's delinquent mortgage account raised concerns under Guideline F. In evaluating Applicant's case for mitigation, the Judge noted Applicant's and her husband's unemployment, which were circumstances outside their control that affected their financial condition. She also noted Applicant's evidence of having sought loan modifications throughout the years, the last one in April 2013. However, the Judge stated that there is no evidence of a loan modification having been approved. She also stated that Applicant and her husband have lived in the house since 2008 without having made any payments, despite Applicant's having had steady employment since 2010.

In the whole-person analysis, the Judge noted evidence that the couple stopped making mortgage payments a year before Applicant lost her job. Applicant did not corroborate her claim that she had money set aside to pay the loan, and there is no evidence of an actual plan to resolve this matter. She concluded that Applicant had not met her burden of persuasion regarding mitigation.

Discussion

Applicant contends that the Judge erred in finding that the Consent Order expressly tied a loan modification to the reformation of the deed to her house. She states that she had never claimed that to be the case. Rather, she asserts the loan modification was a "condition precedent" to her agreement to the Consent Order. Appeal Brief at 6. We examine a Judge's findings to see if they "are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

We have considered Applicant's argument in light of the record. We construe her position to be that the lender had entered into an enforceable agreement to approve a loan modification if Applicant and her husband would consent to reform the deed.[2] The Judge found that Applicant's claims were not corroborated by documentary evidence or a Court decree. This finding is consistent with the record that was before her. Even if the Judge's finding contained an error, it did not affect the outcome of the case. The Judge's material findings are based on substantial evidence, or

[1]This debt was not alleged in the SOR.

[2]Applicant argues that her and her husband's testimony about this purported agreement demonstrate that she has made a good-faith effort to resolve the mortgage debt. *See* Directive, Enclosure 2 ¶ 20(d).

constitute reasonable characterizations or inferences that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant challenges the Judge's application of the mitigating conditions set forth in the Directive. As stated above, the Judge noted the circumstances that were outside Applicant's control that had an impact on her financial condition. However, given the record that was before her, the Judge's conclusion that Applicant had failed to demonstrate responsible action is supportable.[3] We note first of all the Judge's finding that Applicant and her husband had stopped making mortgage payments a year before she lost her job. Moreover, the Judge's findings that Applicant and her husband have been living in their house since 2008 without making payments and that the evidence does not show a plan for debt resolution also support her adverse conclusion. We have considered Applicant's arguments in their totality and find no reason to disturb the Judge's treatment of the mitigating conditions.

Applicant's citation to various pieces of evidence are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). Applicant's arguments amount to an alternative interpretation of the record, which is not sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-01977 at 2-3 (App. Bd. Dec. 30, 2013).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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."

[3]Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael 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