

KEYWORD: Guideline F

DIGEST: The Board has no authority to grant a continuance to develop additional evidence. Adverse decision affirmed.

CASENO: 14-00151.a1

DATE: 09/12/2014

DATE: September 12, 2014

In Re:)	
)	
-----)	ISCR Case No. 14-00151
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Enid Cruz, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 28, 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 29, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 has held a security clearance since 2002. Between 2006 and 2012, she incurred several delinquent debts. The Judge found against Applicant for three of them. One was a credit card debt for which she has experienced trouble getting in touch with the creditor, insofar as the debt had been reassigned to several collection agencies. She spoke with the creditor recently and was informed that they had no record of the debt.

Another debt was for a time share Applicant had purchased along with her significant other. Although the two had separated, he wanted to get back together with Applicant, and she gave him permission to add her name to the contract. Subsequently he lost his job, and Applicant has not been able to make payments. The creditor has offered to settle the debt, but Applicant is not able to afford the terms of the proposed settlement. Applicant's significant other is not assisting her in resolving this debt. She stated that she would apply money currently intended to paying a car note toward resolving the time share debt. She is currently one month behind on this car loan.

Finally, Applicant owes money on a charged-off account. She claims that she has paid off a debt to the same creditor, but the account numbers for the two debts do not match. The Judge concluded that this debt is unresolved.

Applicant had a prior significant other. After their relationship ended, she had to short sell her home due to impending foreclosure proceedings. She receives no child support on behalf of her son. She earns between \$68,000 and \$70,000 annually. She does not maintain a budget and lives paycheck to paycheck.

The Judge's Analysis

The Judge noted Applicant's contention that her problems were related to the breakup with her significant other. This person has not helped satisfy bills that were jointly incurred. The Judge cited to evidence that this was not the first time a broken relationship led to financial problems for Applicant, in light of her prior foreclosure action. He stated that, two years after breaking up with her second significant other, she jointly purchased a time share with him, ultimately being saddled with a debt that they had acquired together. He described Applicant's circumstances as recurrent.

Although he cleared Applicant of most of the debts alleged in the SOR, the Judge stated that the remaining three comprised 82% of the total amount alleged. He cited to evidence that Applicant does not maintain a budget and is behind on her car loan. Although the car loan was not alleged, the Judge found it relevant because Applicant intends to address her time share after she has satisfied the debt for her car. He also stated that this loan demonstrates that (1) Applicant's financial condition is not under control and (2) it is questionable as to whether she is in a position to begin addressing her remaining debts.¹

Discussion

Applicant cites to a number of debts that she contends have been paid. Her brief includes references to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. *See also* ISCR Case No. 08-05379 at 2 (App. Bd. Sep. 15, 2010). To the extent that she is challenging the sufficiency of the Judge's findings of fact, we conclude that the Judge's material findings of security concern are based upon substantial evidence or constitute reasonable inferences that can be drawn from the evidence. *See, e.g.*, ISCR Case No. 08-11735 at 2-3 (App. Bd. Sep. 21, 2010). Applicant's citation to her efforts at debt resolution is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04641 at 3-4 (App. Bd. Sep. 24, 2013). Moreover, Applicant's apparent disagreement with the Judge's weighing of the evidence is not sufficient to show that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 09-01970 at 3 (App. Bd. Oct. 29, 2010).

Applicant states that several of her debts were incurred more than seven years ago, which is beyond the time requirement in her security clearance application. To the extent that Applicant is arguing that they do not set forth security concerns, we note that the Judge's sustainable findings that the debts he found against her were unresolved as of the close of the record. Therefore, they constitute a continuing course of conduct. *See, e.g.*, ISCR Case No. 10-11083 at (App. Bd. Dec. 18, 2012). A reasonable person could conclude that Applicant's financial problems indicate poor self control or a lack of judgment, thereby impugning her reliability and trustworthiness, issues that are central to the concern addressed under Guideline F. *See* Directive ¶ 18.

Applicant requests a 90 day extension of time in which to resolve her remaining indebtedness. Our scope of review is limited to those issues described in Directive ¶ E3.1.32.² We have no authority to grant Applicant a continuance in order to develop additional favorable evidence. An applicant is not entitled to a delayed or deferred adjudication of her request for a clearance. *See, e.g.*, ISCR Case No. 10-07892 at 1-2 (App. Bd. Sep. 7, 2011).

¹Conduct not alleged in the SOR can be considered in evaluating an applicant's credibility, rehabilitation, case for mitigation, etc. *See, e.g.*, ISCR Case No. 11-11959 at 5, n. 2 (App. Bd. Oct. 15, 2013).

²We examine a Decision to see if (1) the Judge's findings of fact are supported by substantial evidence; (2) the Judge adhered to procedures set forth in the Directive; and (3) the Judge's rulings are arbitrary, capricious, or contrary to law.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. In evaluating a case under Guideline F, a Judge may consider not only the extent of an applicant's debts but also the circumstances under which they were incurred and the applicant's response to them. *See, e.g.*, ISCR Case No. 11-00046 at 3 (App. Bd. Feb. 10, 2012). 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 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