

KEYWORD: Guideline F

DIGEST: Applicant has successfully demonstrated error by the Judge. However, the Board concludes that Judge would have reached the same ultimate conclusion even if she had not had errors in the findings of fact.. Adverse decision affirmed.

CASENO: 14-00480.a1

DATE: 07/02/2015

DATE: July 2, 2015

In Re:)
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)
 -----) ISCR Case No. 14-00480
)
)
 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 May 20, 2014, 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 that the case be decided on the written record. On May 15, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Erin C. Hogan denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.¹

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge made the following findings: Applicant is 57 years old. Her background investigation revealed eight delinquent accounts totaling approximately \$53,669. Her financial problems arose from her husband losing his full-time job in 2008. Finding other employment was difficult. Applicant’s husband has been working part-time jobs for years. In order to deal with the loss of income, Applicant took out a loan against her 401(k) to pay her bills. She has since paid the loan back. In 2010, she and her husband modified their home mortgage to reduce the monthly payment. She thought her financial issues were finally under control.

In 2012, Applicant’s son and his infant daughter moved into the household. The child has medical issues. Applicant and her husband help out with expenses for the child. Applicant intends to contact each creditor to set up payment plans or to consolidate debt. She claims some of the debts listed in the SOR are duplicates. Applicant has entered into payment agreements on some of the debts, but she did not provide that she was making payments. Two of the debts are duplicates. There is insufficient evidence to support Applicant’s claim that three additional debts are duplicates of other debts.

The Judge reached the following conclusions: Applicant incurred numerous delinquent debts that she has been unable or unwilling to pay over the past several years. Although Applicant maintains that she is on payment plans to resolve some of the debts, she did not provide any documentation that she is regularly making payments toward these payment plans. Applicant’s unresolved debt indicates irresponsible behavior and continues to cast doubt on her reliability, trustworthiness, and good judgment. Even though she encountered circumstances beyond her control which caused some financial problems, the record evidence is insufficient to conclude Applicant acted responsibly under the circumstances because she provided no proof verifying her assertion that she is making payments on three of her debts. There is also no evidence supporting a conclusion that Applicant’s financial problems are under control because she provided no information about her monthly budget, including her monthly income and expenses. Applicant’s

¹The Judge made formal findings under Guideline E that were favorable to Applicant. Those findings are not at issue on appeal.

history of financial problems raises doubts about her ability to handle and protect classified information.

Portions of Applicant's brief and attachments contain representations that go beyond the record evidence. The Board cannot consider new evidence on appeal. Directive, ¶ E3.1.29.

Applicant asserts on appeal that there are debts alleged in the SOR that were duplicative of one another and, with one exception, the Judge erroneously concluded that there was insufficient evidence to establish these duplications.² When a Judge's findings of fact are challenged, the Board must determine whether those findings 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. After a review of the record, the Board concludes that in two instances, Applicant's argument has merit.

A civil court document (Item 1 at 1-8) submitted by Applicant lists a plaintiff whose identity matches that of the creditor listed in subparagraph 1(b) of the SOR. That document indicates that the debt at issue in the lawsuit was purchased from a creditor whose identity nearly matches that of the creditor listed in subparagraph 1(e) of the SOR. Also, a letter (Item 1 at 1-7) written by Applicant in 2012 to the same law firm who represented the subparagraph 1(b) creditor contains the account number for the debt listed at subparagraph 1(e) and contains a court docket number that matches the court docket number on the civil court complaint filed for the debt listed at subparagraph 1(b). In her letter, Applicant indicates she is disputing the amount of the debt, which tracks the information provided in the applicable credit report³ entry Item 3, listing under "1", "Collections." Finally, there is only one listing in the credit report for a delinquent debt involving the original creditor identified in the civil court document. When discussing Applicant's assertion of duplication involving these two SOR allegations, the Judge said without elaboration, that she was unable to conclude from the record that the two are the same debt. Applicant did not admit the SOR allegation in subparagraph 1(e), thereby requiring the Government to prove the allegation. Under these circumstances, the Board concludes that there is substantial evidence to support Applicant's claim, and there is no record evidence that effectively refutes it. The Judge erred by finding that the debts at subparagraphs 1(b) and 1(e) were not duplicative.

Similarly, a law firm letter to Applicant (Item 1 at 1-10) lists three creditors. It clearly identifies one creditor as the one listed at subparagraph 1(d) of the SOR. The creditor identity corresponds to a debt listed at "6-Trade Lines" in the credit report. The letter also lists a current balance of \$2,821.28. This amount matches the "high credit" listing for a debt found at "5" under "Trade Lines" in the credit report. The creditor identified for the debt found at "5-Trade Lines" in

²Applicant's appeal brief states that the debt alleged in subparagraph 1(a) is the same debt as those alleged in subparagraphs 1(c) and 1(f), that the debt alleged in subparagraph 1(d) is the same as the one alleged in 1(g), and the debt alleged in subparagraph 1(b) is the same as the one alleged in 1(e). The Judge found only one duplication— between 1(a) and 1(c).

³There is only one credit report in the case record and it post-dates the SOR by 10 months. Assuming that a credit report formed the basis for the Guideline F allegations, it is not in the case record.

the credit report is also listed on the law firm letter (Item 1 at 1-10) and in subparagraph 1(g) of the SOR. Additionally, the original creditor listed at “5–Trade Lines” in the credit report is listed on the law firm letter and in the allegation at subparagraph 1(g) of the SOR. When reviewing this issue, the Judge again simply stated that she was unable to conclude from the record that duplication exists. Applicant did not admit the SOR allegation under subparagraph 1(g), thus requiring the Government to bring forth its proof. The Board again concludes that substantial evidence supports Applicant’s position with no countervailing evidence discernible from the record. The Judge erred by not finding that these two debts were the same.

Applicant also argues that the debt listed at SOR subparagraph 1(f) is the same debt as those listed at subparagraphs 1(a) and 1(c). While there is a possible connection owing to the identification of a common original creditor, the Board concludes that there is insufficient evidence to counter the Judge’s finding that the debt alleged in SOR subparagraph 1(f) is not duplicative of the debt listed in subparagraphs 1(a) and 1(c).

Having found error, the Board must now determine whether the errors were harmful. Upon consideration of the Judge’s decision and the entire record, the Board concludes that, while the errors had the effect of increasing the number of apparent outstanding delinquent debts chargeable to Applicant, the errors ultimately were harmless. The gravamen of the Judge’s decision was her conclusion that the Government’s security concerns were not mitigated because, although there was evidence that Applicant had established payment plans with several of her creditors, she provided no evidence that she had actually made any payments on the debts. This conclusion is supported by the record and is sufficient to sustain the Judge’s ultimate adverse security clearance decision. The Judge was also influenced by the fact that Applicant provided no evidence concerning her monthly income and expenses. There is no indication in the Judge’s decision that she was significantly influenced by the precise number and size of Applicant’s debts, and correction of the errors previously described would not substantially reduce either category. The two duplicate debts, even if they were excluded from the Judge’s analysis, would not reasonably be likely to change the outcome of the case, given the extent of the remaining debt and the unresolved nature of that debt. *See* ISCR Case No. 01-23362 at 2 (App. Bd. Jun. 5, 2006).⁴

Applicant asserts that she has mitigated the Government’s concerns. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-25157 at 2 (App. Bd. Apr. 4, 2008). As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for

⁴The credit report (Item 3) indicates recent payments made on three debts 1(d), 1(f), and 1(h). There are single dates in late 2014 and early 2015 placed next to a category labeled “last payment.” This constitutes some evidence of payment on Applicant’s part. However, these single entries in a credit report did not satisfy the Judge’s stated requirement for documents provided by the Applicant that establish multiple payments made on a regular basis. It was not arbitrary or capricious for the Judge to insist upon direct evidence from Applicant in the form of receipts, bank statements, or payment histories from the creditors before she could conclude that Applicant was dealing with her outstanding delinquent debt in a responsible manner.

a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). A review of the Judge’s decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in her analysis. The Judge found in favor of Applicant as to some of the SOR allegations. However, the Judge offered a reasonable explanation as to why the disqualifying conduct under Guideline F was not fully mitigated.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes 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 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). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board