

KEYWORD: Guideline F

DIGEST: A Judge is not authorized to serve as an investigator, to do so would be inconsistent with the Judge's obligations as an independent fact finder. Adverse decision affirmed.

CASENO: 14-03062.a1

DATE: 09/11/2015

DATE: September 11, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-03062
)	
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 August 8, 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 decision on the written record. On June 30, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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 is a high school graduate who has attended college without receiving a degree. Although single, she lives with her former husband. She has been working for her current employer since 2013.

Applicant’s SOR lists several past-due debts, for a mortgage, credit cards, student loans, and other things. One debt, in the amount of \$11,000, was a credit card debt incurred in the purchase of a vehicle. In her security clearance application, she stated that this was her son’s debt that she was repaying. She submitted no documentation corroborating her claim that she did not owe the debt. She submitted portions of credit reports with handwritten annotations as proof that she had satisfied her student loans. A credit report included in the FORM, more recent than Applicant’s submission, shows that two of the student loan accounts were paid after they were sent to collection. It also shows that two other student loans are either in collection status or “seriously past due.” Decision at 3. Applicant disputes some of the SOR debts, although three of these are still listed on her credit report as in collection or charged off.

During her clearance interview, Applicant told the investigator that she had recently sought financial counseling and was in the process of resolving past due debts through a debt consolidation program. She did not submit evidence regarding her current finances or in corroboration of her claim of financial counseling.

The Judge’s Analysis

The Judge resolved the mortgage debt in Applicant’s favor. However, he reached the opposite conclusion for the remainder of the allegations. He stated that Applicant had been provided with detailed notice, both in the File of Relevant Material (FORM) and through a subsequent email from himself, of her opportunity to provide documentary evidence in mitigation of the concerns raised by her bad debts. He stated in the Analysis that she bore the burden of presenting “clear, concise, and unambiguous documentary evidence,” but her submission of part of “a somewhat outdated credit report with handwritten notations is far from clear.” *Id.* at 5. He also stated that Applicant’s presentation was contradicted by other evidence in the record. Noting that Applicant

had not provided a response to the FORM, the Judge concluded that her security concerns were not mitigated.

In the whole-person analysis, he acknowledged favorable evidence underlying the mortgage debt, but he concluded that it did not outweigh the security concerns raised by Applicant's overall financial record. Concluding that Applicant had failed to meet her burden of persuasion, the Judge stated that the record left him with doubts and questions about Applicant's eligibility for a clearance.

Discussion

Applicant's brief is accompanied by matters not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant argues that the Judge did not verify the information that she provided about the status of her student loans. However, a Judge is not authorized to serve as an investigator in a case, for to do so would be inconsistent with his or her status as an independent fact-finder. *See, e.g.*, ISCR Case No. 14-01925 at 3 (App. Bd. June 26, 2015). Applicant also contends that she had never been advised by the clearance investigator that she needed to corroborate her claim to be receiving financial counseling. However, as the Judge's findings demonstrate, Applicant received sufficient notice of her burden of persuasion and of her obligation to provide evidence in meeting that burden. Applicant's failure to have responded to the FORM cannot fairly be attributed to inadequate notice of her rights and obligations. Applicant was not denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 14-01567 at 3 (App. Bd. Apr. 10, 2015).

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."

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