

KEYWORD: Guideline F

DIGEST: The Judge’s material findings satisfy the requirements of the Directive for factual sufficiency. Applicant did not rebut the presumption that the Judge considered all of the evidence. Comments in the interview summary do not represent the opinions of the interviewer as to Applicant’s security eligibility. Adverse decision affirmed.

CASE NO: 14-06293.a1

DATE: 01/13/2016

DATE: January 13, 2016

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In Re:)	
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-----)	ISCR Case No. 14-06293
)	
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 4, 2015, 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 November 15, 2015, after considering the record, 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 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 numerous delinquent debts, the majority of which were in collection or charged-off status. Applicant has paid some of her debts, including one owed to the IRS. However, the Judge entered adverse formal findings on twelve debts alleged in the SOR. Applicant attributed her problems to a period of unemployment in 2011 occasioned by a government shutdown, to her son's medical problems, and to a period of separation from her husband.

Applicant filed for Chapter 7 bankruptcy protection in January 2015. Her unsecured nonpriority claims, totaling nearly \$64,000, included a student loan, personal loans from a bank or credit union, medical debts, insurance costs, a deficiency from the sale of a repossessed vehicle, etc. Applicant received the required credit counseling, advising that she gained "valuable insight into managing her finances." Decision at 2. She also took a 13-week course provided by a financial education program. Applicant's debts were discharged in June 2015.

As of 2014, Applicant and her husband had a combined income of nearly \$98,000, up from the previous year's total of a little over \$83,000. As of September 2015, her average checking account balance was \$3,364, and her savings account balance was \$1,198. Applicant enjoys an excellent reputation for her work ethic, organization, knowledge, trustworthiness, and honesty. Applicant's performance appraisals rate her as "fully successful," "highly successful," or "exceptional." *Id.* at 3. She is involved in church and community activities. She has earned awards and recognitions for her duty performance.

The Judge's Analysis

Though noting that Applicant's financial problems were affected by circumstances outside her control, the Judge stated that Applicant did not provide information about what efforts she took to resolve her debts before resorting to bankruptcy. She cited to evidence that Applicant's and her husband's combined incomes increased from 2013 to 2014, yet she did not pay her creditors. The Judge stated that Applicant has worked steadily since resuming her employment in 2011, and she and her husband reconciled in that year also. The Judge stated that, insofar as it had been only five months since Applicant's discharge in bankruptcy, it was too soon to tell if there are clear indications that her financial problems are behind her.

In the whole-person analysis, the Judge stated that Applicant did not explain what action she took to resolve her debts. Despite her bankruptcy discharge, the Judge concluded that insufficient time had elapsed to establish a track record of sound financial strategy.

Discussion

Applicant challenges some of the Judge’s findings of fact. We conclude that the Judge’s material findings of security concern 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 ¶ E3.1.32.1.¹

Applicant cites to her favorable evidence, such as the circumstances outside her control that influenced her problems, her statement that she pays her current bills, her reliance upon the advice of counsel in deciding to pursue bankruptcy, her having obtained credit counseling, etc. The Judge made findings about the evidence that Applicant cites in her Appeal Brief. She discussed much of this evidence in the Analysis portion of the Decision. Applicant’s argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015).

Applicant disagrees with the Judge’s comment that insufficient time has passed to show that she is in control of her finances. She also states that she has been candid in her presentation of her financial difficulties and the reasons underlying them. Applicant’s appeal argument is, in essence, a disagreement with the Judge’s weighing of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-04202 at 3 (App. Bd. Dec. 24, 2015). Moreover, we conclude that the Judge’s whole-person analysis complies with the requirements of the Directive, in that she evaluated Applicant’s security significant conduct in light of the record as a whole. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

Applicant cites to a comment in Item 6, Person Subject Interview Summary, to the effect that there is nothing in her background that could subject her to coercion or blackmail. This represents the interviewer’s summary of Applicant’s statements during the interview, not the interviewer’s opinion of Applicant’s security eligibility. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The Judge’s conclusion that Applicant had not provided enough evidence to meet her burden of persuasion as to mitigation is supportable. Insofar as the Applicant bears the burden of persuasion that he or she should have a clearance (Directive ¶ E3.1.15), a Judge can legitimately point to a paucity of mitigating evidence in support of an adverse decision. *See, e.g.*, ISCR Case No. 14-02632 at 3 (App. Bd. Aug. 28, 2015)(The Judge’s adverse decision based in large part upon an

¹As stated above, the Judge found that Applicant’s debts included a student loan. Applicant states that she herself does not have any student loans and that, in any event, “student loans are not permitted to be included in bankruptcy.” Appeal Brief at 2. The Judge’s finding about the student loan appears to have been based on Item 7, Bankruptcy Petition. On page 50 of this document, “Sallie Mae” is listed under Schedule F, Creditors Holding Unsecured Nonpriority Claims, as a creditor to whom a debt for a “student loan” is owed in the amount of \$12,707. The Bankruptcy Petition was signed by both Applicant and her husband. We note that Item 8, Bankruptcy Discharge, at page 2, states that “[d]ebts for most student loans” are not discharged in Chapter 7 bankruptcy. Even if the Judge erred by not including this exception in her findings, it did not harm Applicant. Therefore, assuming *arguendo* that the Judge erred in this matter, it is harmless.

absence of evidence to show mitigation). 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