

KEYWORD: Guideline F

DIGEST: Even if the Judge made the errors that Applicant has alleged, they did not likely exert an effect on the outcome of the case. Her decision was based upon a paucity of mitigating evidence regarding responsible conduct after the compromise of her credit card, which is sustainable. Adverse decision affirmed.

CASENO: 14-06338.a1

DATE: 06/24/2016

DATE: June 24, 2016

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In Re: )  
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 ----- ) ISCR Case No. 14-06338  
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 Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Dennis J. Sysko, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 5, 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 April 5, 2016, 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 issues on appeal: whether the Judge failed to consider or address significant record evidence, thereby impairing the sufficiency of her findings of fact, and whether the Judge’s whole-person analysis was erroneous. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

The Judge made the following findings pertinent to the issues raised on appeal: Applicant has worked for Federal contractors since 2002, except for two months in 2008 in which she was unemployed. Her SOR lists several delinquent debts, most of which the Judge resolved in her favor. However, for three of them—all student loans—the Judge entered adverse findings. She did not provide corroboration for her claim that she had applied for forbearance or that the request had been approved. She stated that her debit card had been compromised and that she did not switch the automatic payments to the replacement card. She provided a document that showed that she had made a one-time payment of \$100 toward satisfying her student loan accounts. This document showed that two of the student loans—totaling over \$14,000—had been consolidated into one payment. There is no evidence that Applicant had arranged an automatic payment for this debt. Applicant did not provide evidence to show that the remaining student loan, in the amount of a little over \$570, had been consolidated with the other two.

### **The Judge’s Analysis**

The Judge’s adverse findings were based upon the three student loans discussed above. The Judge stated that Applicant had failed to submit corroboration for her claims (1) that she was paying the loans until 2013; (2) that she began paying them when she learned they were in collection; (3) that they are in forbearance; or (4) that she is making regular payments on them. Accordingly, the Judge concluded that Applicant had not demonstrated responsible action in regard to her debts. In the whole-person analysis, the Judge reiterated her finding that Applicant had not corroborated her claims regarding the student loans.

### **Discussion**

Applicant challenges the Judge’s finding that she did not submit evidence showing that the \$570 loan had been consolidated, citing to entries in her credit reports to the effect that this debt has been closed or transferred. She also challenges the finding that she had provided no evidence in support of her claim that she had made student loan payments up until 2013, again citing to entries in her credit reports, as well as to a set of DOHA interrogatories from 2003 which show some

payment activity on her student loans. She argues that the Judge's decision is defective insofar as she does not discuss the cited evidence.

A Judge is not required to discuss every piece of evidence in the record, which is a practical impossibility. *See, e.g.*, ISCR Case No. 14-02158 at 3 (App. Bd. Mar. 21, 2016). Moreover, the credit reports do not unequivocally demonstrate that the small student loan had been consolidated with the others or that Applicant had actually been paying her student loans before 2013. Regarding the evidence from the 2003 interrogatories, even if they show some payment in that year, it would not undermine the challenged finding. A statement in a Decision that Applicant had not paid debts prior to 2013 is not seriously undermined by showing that she had made some payments ten years previously. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-05795 at 2, 3 (App. Bd. Apr. 26, 2016). Even if the Judge made the errors that Applicant has alleged, they did not likely exert an effect on the outcome of the case. Her decision was based upon a paucity of mitigating evidence regarding responsible conduct after the compromise of her credit card, which is sustainable, based upon the record that was before her. Therefore, any errors in the Decision are harmless. *See, e.g.*, ISCR Case No. 14-03601 at 3 (App. Bd. Jul. 1, 2015). To the extent that Applicant has challenged the sufficiency of the Judge's findings, we conclude that her material findings satisfy the requirements of the Directive. Directive ¶ E3.1.32.1. Moreover, we conclude that the Judge's whole person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: Catherine M. Engstrom  
Catherine M. Engstrom  
Administrative Judge  
Member, Appeal Board