KEYWORD: Guideline F

DIGEST: The Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings, and whether the Judge's findings reflect a reasonable interpretation of the record evidence as a whole. The Judge did not discuss one credit report in his findings on two debts.This credit report is significant record evidence that tends to contradict the Judge's statement that the "credit reports" did not show the debt in SOR allegation 1.f was paid. Adverse decision remanded.

CASENO: 14-06592.a1

DATE: 04/20/2016

DATE: April 20, 2016

In Re:	)	
	)	
---------	)	ISCR Case No. 14-06592
	)	
	)	
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 9, 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 February 3, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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 reflects the record. Specifically, Applicant claimed he paid the debts and the Judge failed to consider his divorce. Consistent with the following, we remand the decision.

The Judge's Findings of Fact and Analysis

The Judge found for Applicant on four delinquent debts alleged in the SOR because of Applicant's unemployment and eventual payment of the debts. He found against Applicant on two delinquent debts (SOR allegations 1.e and 1.f), totaling almost $4,000. He determined the credit report dated October 7, 2014, showed the debt in allegation 1.e was unresolved and the "credit reports" did not show the debt in allegation 1.f was paid. He concluded that Applicant's circumstances raised two concerns: "inability or unwillingness to satisfy debts"[1] and "a history of not meeting financial obligations[.]"[2]

Discussion

We construe Applicant's appeal as challenging the Judge's findings that the debts in SOR allegations 1.e and 1.f are unpaid. When an administrative judge's factual findings are challenged, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such 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. The Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings, and whether the Judge's findings reflect a reasonable interpretation of the record evidence as a whole.

In a credit report dated September 28, 2015, the comments section addressing the debt in SOR allegation 1.e reflects "Consumer disputes - reinvestigation in progress[.] Paid charge off[.]" The balance and past-due amount for that debt are listed as zero. The date of last payment on the debt is listed as October 2014, which is also the month of the credit report cited in the Judge's finding that the debt was unresolved. Additionally, the credit report dated September 28, 2015,

[1]Directive, Enclosure 2 ¶ 19(a).

[2]Directive, Enclosure 2 ¶ 19(c).

reflected the status of the debt in SOR allegation 1.f was "Pays account as agreed[,]" and listed the past-due amount as zero.

A Judge is not required to discuss each and every piece of record evidence in making a decision, but the Judge cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision. *See, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015). In this case, the Judge did not discuss the credit report dated September 28, 2015, in his findings on the debts in SOR allegations 1.e and 1.f. This credit report is significant record evidence that should have been discussed in reaching a decision on those allegations. It also tends to contradict the Judge's statement that the "credit reports" did not show the debt in SOR allegation 1.f was paid. The Board remands the case to the Administrative Judge for consideration of the credit report dated September 28, 2015, in regards to the debts in SOR allegations 1.e and 1.f.

Applicant raised other appeal issues, but it would be premature to address those other issues at this time.

Conclusion

Applicant has demonstrated error that warrants remand. Pursuant to Directive ¶ E3.1.33.2., the Board remands the case to the Administrative Judge for the issuance of a new decision in accordance with the instructions herein.

Order

The Decision is **REMANDED**.

See Dissenting Opinion
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy

Administrative Judge
Member, Appeal Board

DISSENTING OPINION OF ADMINISTRATIVE JUDGE MICHAEL Y. RA'ANAN

The majority opinion is predicated on a reading of Applicant appeal brief that I do not share. Applicant wrote (in pertinent part) "It [the Judge's decision] also doesn't state the fact that I took the more challenging approach to my situation. Rather [than] filing for Bankruptcy I honored my Debt and paid Everything." (text added in brackets for purposes of clarity.)

The majority's decision relies on a reading of the cited language as a challenge to the Judge's findings of fact regarding the debts discussed in SOR allegations 1.e and 1.f., even though those findings are never mentioned. By contrast, I read the clause as a challenge to the Judge's overall understanding and analysis of Applicant's case in mitigation which is squarely raised by Applicant's language.

The Appeal Board has often noted that an appealing party must raise assignments of error by the Judge with specificity. *See, e.g.*, ISCR Case No. 14-03734 at 4 (App. Bd Feb. 18, 2016) "On appeal, Applicant discusses Guideline E only peripherally, and does not assert error on the part of the Judge with the requisite degree of specificity." *See also, e.g.* ISCR Case No. 14-00683 at 3 (App. Bd. Jan. 28, 2015). "There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Judge committed factual or legal error."

Given our limited scope of review under the Directive, our case law regarding specificity and the current concern for judicial economy, I conclude that the Judge's decision should be affirmed.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board