

KEYWORD: Guideline F

DIGEST: The Board has no authority to grant an interim, conditional or probationary clearance. Adverse decision affirmed.

CASENO: 15-01807.a1

DATE: 04/19/2017

DATE: April 19, 2017

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In Re:	)	
	)	
-----	)	ISCR Case No. 15-01807
	)	
Applicant for Security Clearance	)	
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**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 October 26, 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 January 25, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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**

Forty six years old, Applicant has worked for her current employer, a DoD contractor, since 2014. She is divorced and has experienced periods of unemployment. The SOR alleges 13 debts totaling about \$83,000, including a past-due mortgage (SOR ¶ 1.a). She provided proof of consistent payments for over a year on the mortgage, plus proof of other large payments. She established that a credit card account (SOR ¶ 1.d) was not her responsibility. She referenced a pending court hearing on a judgment against her for about \$28,000 (SOR ¶ 1.m) and a monthly payment agreement, but provided no documentation of a payment history or remaining balance. She provided no evidence of payments or other steps taken to resolve the remaining ten debts. She claimed two of those debts were duplicates; however, credit reports, beyond balances, do not link the two accounts.

### **The Judge’s Analysis**

The Judge found for Applicant on the mortgage debt and the debt that was not her responsibility. He found against her on the remaining debts. Her divorce and periods of unemployment were circumstances beyond her control, but there is no evidence of debt repayment beyond her mortgage. She provided insufficient evidence of a reasonable plan for debt repayment or to establish her financial problems are being resolved.

### **Discussion**

Much of Applicant’s appeal presentation consists of matters from outside the record. For example, she provided documents showing payments towards debts. However, we cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant argues that mitigating condition 20(a)<sup>1</sup> applies to the mortgage debt in SOR ¶ 1.a.

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<sup>1</sup> Directive, Enclosure 2 ¶ 20(a) states, “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not case doubt on the individual’s current liability, trustworthiness, or good judgment[.]”

Since the Judge found in favor of her on the mortgage debt, we need not address her argument regarding that debt.

Item 4 of Department Counsel's File of Relevant Material (FORM) is the summary of Applicant's personal subject interview (PSI) with an Office of Personnel Management investigator. The Judge admitted Item 4 into evidence. Applicant's Appeal Brief states:

In regards to FORM Item 4, there were many responses that I indicated were incorrectly reflected. The information contained in the FORM from the investigation contained numerous facts that were incorrect and not as reported.

The Appeal Brief does not identify the information that she claims is incorrect. It is noted that Applicant was provided a copy of the FORM and advised of her opportunity to submit objections or material that she wanted the Judge to consider.<sup>2</sup> She submitted a response to the FORM in which she neither objected to Item 4 nor indicated that it contained any information that was incorrect.<sup>3</sup> In the absence of any objection to Item 4 or indication that it contained inaccurate information, the Judge did not err by admitting and considering that document. *See, e.g.*, ISCR Case No. 14-06781 at 3 (App. Bd. Dec. 16, 2016).

In the Appeal Brief, Applicant discusses, among other matters, the circumstances under which her debts arose and her efforts to resolve them. These assertions are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017).

Applicant requests that we postpone our decision for a short period to allow her the opportunity to take corrective steps to prove she is worthy of a security clearance. We have no authority to grant an interim, conditional, or probationary clearance. *See, e.g.*, ISCR Case No. 14-04289 at 2 (App. Bd. Sep. 9, 2015). She also points out that her job is important to her and her family, implying that she may lose her job. The Directive does not permit us to consider the adverse consequences of an unfavorable decision. *Id.*

Applicant has not identified any harmful error likely to change the outcome of the case. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. "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

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<sup>2</sup> A footnote in the FORM advised Applicant that she could object to Item 4 on the ground that it is unauthenticated by a Government witness and may not be considered as evidence. She was also advised that, if she failed to raise an objection to Item 4, the Judge may determine she waived any objection to its admissibility and consider it.

<sup>3</sup> From the record, the Appeal Board is unable to discern what information in Item 4 is incorrect.

to classified information will be resolved in favor of the national security.” The decision is sustainable on this record.

**Order**

The Decision is **AFFIRMED**.

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

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board