

KEYWORD: Guideline E

DIGEST: Applicant argues that she did not receive credit for her Constitutional presumption of innocence until proved guilty.

The Judge’s findings about Applicant’s infractions are consistent with the record evidence, particularly Applicant’s SOR admissions, her answers during her clearance interview, and her hearing testimony. The presumption of innocence is a principal of criminal law that has limited application in a DOHA adjudication. DOHA applicants are not afforded the same protections as criminal defendants. Indeed, a Judge may legitimately find that an applicant has committed security-significant conduct despite evidence that charges were dismissed, not prosecuted, or resulted in acquittals. . After considering the record in its totality, we conclude that the Judge’s material findings are based upon substantial evidence or constitute reasonable inferences that can be drawn from the evidence.

CASENO: 15-04217.a1

DATE: 12/26/2017

DATE: December 1, 2017

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In Re:)	
-----)	ISCR Case No. 15-05310
)	
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 21, 2016, 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 September 12, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found against Applicant on a second mortgage that was charged off in the amount of approximately \$147,000 and on four time share debts totaling over \$8,000 that were placed for collection. In her Answer to the SOR, Applicant admitted each of the debts with explanations.

Much of Applicant’s appeal brief consists of matters from outside the record. For example, she submitted a homeowner’s title insurance policy, employee performance reviews, and narrative explanations that she did not previously submit to the Judge for consideration. Such information constitutes new evidence that the Appeal Board cannot consider on appeal. Directive ¶ E3.1.29.

Applicant asserts that the Judge and Department Counsel reached adverse conclusions based on limited information. Applicant is responsible for presenting evidence in mitigation, extenuation, rebuttal, or explanation. Directive ¶ E3.1.15. Applicant had opportunities to submit information in response to the SOR and the File of Relevant Material. She submitted evidence in both instances. To the extent that she is arguing that she was denied the due process afforded by the Directive, the Board concludes otherwise.

Applicant argues the Judge erred in referring to the second mortgage as a “home equity line of credit” and in finding: “Whether Applicant used the [second mortgage] loan proceeds to upgrade their home, on investment property purchases, or for property investments is unclear.” Appeal Brief at 1, citing Decision at 3 and 6. We note one credit report in the record refers to the second mortgage as a “Joint Con[ventional] Mortgage” (Government Exhibit (GE) 4), while another credit report refers to it as a “Home Equity” loan (GE 5). The Judge’s findings regarding the second mortgage are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Moreover, even if the Judge’s characterization of the second mortgage was not accurate, such an error would have been harmless because it would not have affected the overall outcome of the case. *See, e.g.*, ISCR Case No. 12-00678 at 2 (App. Bd. Jun. 13, 2014). Applicant also claims the Judge’s

findings regarding the second mortgage implied that she was attempting to defraud the lender; however, we do not agree with that interpretation of the Judge’s decision.

Applicant also claims the Judge erred in finding that “she did not furnish character references.” Appeal Brief at 2-3. She notes that she listed character references on her security clearance application. From our reading of the record, it appears the Judge meant to say that Applicant did not present any “character reference letters.” This error by the Judge was also harmless. *See, e.g.*, ISCR 12-0340, *supra*. In this regard, we note that the Directive does not permit a Judge to act as an investigator for either party. *See, e.g.*, ISCR Case No. 11-06659 at 5 (App. Bd. Oct. 22, 2012). Consequently, a Judge is not authorized to contact independently individuals listed as character references to obtain information from them.

The balance of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence. Her arguments, however, are not 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. 15-01652 at 2 (App. Bd. Jul. 7, 2017).

Applicant has not identified any harmful error in the Judge’s decision. The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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