

KEYWORD: Guideline F

DIGEST: The security concerns under Guideline F are broader than the possibility that an applicant might knowingly compromise classified information in order to raise money to satisfy his or her debts. Financial problems may also raise concerns about an applicant’s self-control, judgment, and other qualities essential to protecting classified information. Adverse decision affirmed.

CASENO: 15-05049.a1

DATE: 07/12/2017

DATE: July 12, 2017

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 15-05049

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Stephen D. Lofaso, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 11, 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 24, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Kilmartin 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 improperly applied the whole-person concept and 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 and Analysis

Applicant, who is 61 years old, has worked for a Federal contractor since 2013. Her first marriage ended in divorce in 1997. She remarried in 1997 and separated from her second husband in 2012. She has held security clearances without incident since about 1980.

Applicant admitted the SOR allegation that she filed Chapter 7 bankruptcy, which was discharged in 2003.¹ She denied 11 of the 12 alleged debts that totaled over \$219,000 and included a foreclosed first mortgage and charged-off second mortgage. She disclosed in her security clearance application some of the debts that she has denied. She attributed her financial problems to her and her husband's loss of employment.

Applicant claims to have contacted her creditors to make payment arrangements and expressed an intent to pay all debts in the future. She provided proof of satisfaction of a state lien, but provided no evidence of payments or mitigation regarding the other debts. Her financial problems are not under control and remain a security concern.

Discussion

Applicant contends that the Judge improperly applied the whole-person concept. She notes the Directive contains 13 adjudicative guidelines, which she refers to as "characteristics,"² and points out that she only had security concerns alleged under one guideline. She argues "an adjudicator should weigh the severity of [her alleged security] concerns against the 12 other characteristics [guidelines]" . . . "to determine whether that one characteristic outweighs all others in the whole-person analysis." Appeal Brief at 3-4. She further states:

The decision never discusses how [Applicant's] alleged financial debts are so serious that they warrant overriding the other 12 characteristics of the whole-person concept for which the government found no concerns. Instead, the decision merely concludes that [Applicant's] alleged financial debt makes her a higher national security risk under the whole-person concept. It does not put forth any analysis on how the financial considerations aspect of the whole-person analysis was weighed and balanced against, *e.g.*, [Applicant's] Allegiance to the United States or her Personal Conduct, or her assessment on Alcohol Consumption. As such, the decision is

¹ The SOR also alleged that Applicant received a Chapter 7 bankruptcy discharge in 1999, which was withdrawn in Department Counsel's File of Relevant Material (FORM) and was not raised as an issue on appeal.

² The adjudicative guidelines are not "characteristics," but criteria used to identify and assess various security concerns.

arbitrary and capricious as it does not develop or lay-out the analysis undertaken in making the decision that [Applicant's] alleged financial failings shows that she, as a whole-person, taking into consideration all the other prongs required by the Adjudicative Guidelines, would cause a heightened national security risk.³

Applicant's contention is unpersuasive. The Directive does not require that any security concerns arising from admitted or proven SOR allegations under one or more of the guidelines be weighed or balanced against non-alleged guidelines in making a whole-person assessment. What the Directive requires in making a whole-person assessment is that "[a]ll available, reliable information about the person, past or present, favorable and unfavorable, should be considered in reaching a national security eligibility determination." Directive, Encl. 2, App. A, ¶ 2(a). In this regard, we first note that there is a rebuttable 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)), and, second, the Judge is not required to discuss each and every piece of record evidence, which would be a practical impossibility (*see, e.g.*, ISCR Case No. 12-01500 at 3 (App. Bd. Aug. 25, 2015)). Based upon our review of the record, we find no error in the Judge's whole-person assessment in this case.

Throughout her appeal brief, Applicant argues that she should be granted a security clearance because she does not pose "a heightened national security risk." She is requesting that we apply the wrong standard for determining security clearance eligibility. The Directive does not require the Government establish "a heightened national security risk." "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 ¶ 2.3 and 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.") and 2(c) ("The ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person."). We note the Judge applied the correct standard in this case. Decision at 6.

Applicant also argues that the Judge erred in considering "charged-off" debts because she cannot be pressured or coerced regarding debts she no longer owes. This argument lacks merit. First, the security concerns under Guideline F are broader than the possibility that an applicant might knowingly compromise classified information in order to raise money to satisfy his or her debts. Financial problems may also raise concerns about an applicant's self-control, judgment, and other qualities essential to protecting classified information. *See, e.g.*, ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) and Directive, Encl. 2, App. A ¶ 18. Second, the Board has repeatedly held the non-collectability of a debt does not preclude consideration of the debt and circumstances surrounding it in a security clearance adjudication. *See, e.g.*, ISCR Case No. 09-08550 at 4 (App. Bd. Feb. 25, 2011).

Applicant further argues the Judge erred in his mitigation analysis because he did not

³ Appeal Brief at 4.

consider the 2008 downturn in the housing market when analyzing the alleged mortgages. However, the record below contains no evidence or arguments that the 2008 downturn in the housing market was a condition beyond her control that impacted her finances. A credit report (Government Exhibit (GE) 4) and county real estate assessment (GE 7) established the alleged mortgage debts. Once the Government presented evidence establishing the defaulted mortgages, Applicant had the burden of presenting evidence to rebut, explain, extenuate, or mitigate such proven facts and also had the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive ¶ E3.1.15. The record reflects that Applicant only attributed her financial problems to her and her husband's loss of employment, which the Judge discussed. She neither requested the Judge take administrative notice of the 2008 economic downturn nor provided any evidence about that event. A Judge's material findings must be 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). Applicant has cited to no harmful error in the Judge's mitigation analysis.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. For example, she cites to the financial turmoil she has experienced because of her marital separation and the amount of time that has passed since her bankruptcy discharge.⁴ The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-03742 at 3 (App. Bd. Jun. 9, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record.

Order

⁴ Applicant provided few details about her and her husband's unemployment, their separation, and the impact those condition had on her finances. Her security clearance application lists that she had full-time employment from July 2004 until the application's submission in September 2013.

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