

KEYWORD: Guideline F

DIGEST: Applicant’s arguments on appeal are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 15-08779.a1

DATE: 11/3/2017

DATE: November 3, 2017

)	
In Re:)	
-----)	ISCR Case No. 15-08779
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Andrew G. Dualan, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 8, 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 July 25, 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 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

Applicant was divorced in 2012. Her ex-husband lost his job shortly before the divorce and was out of work for a year. During their marriage, Applicant and her ex-husband were discharged in Chapter 7 bankruptcy. A few years later they filed under Chapter 13, but it was dismissed. Applicant's SOR lists several delinquent debts, for medical expenses and an automobile repossession, in addition to the two bankruptcy actions. Applicant states that she could pay the debts, but she disputes them. She contends that she has rebuilt her credit rating since her divorce. However, at the time she completed her security clearance application, Applicant had taken no action to resolve the debts that came to be alleged in the SOR.

Though the Judge noted Applicant's contention that her ex-husband was not a good manager of the couple's finances, he stated that she did not produce evidence, such as a divorce decree, to show that her ex-husband bore responsibility for the debts at issue in this case. In her response to the File of Relevant Material (FORM), Applicant contended that she could easily pay off her debts but had been advised by a law firm to wait until her dispute of a debt alleged to be owed to a bank has been resolved. The Judge found it unclear whether the law firm had actually taken measures to address Applicant's financial problems.

The Judge's Analysis

The Judge noted Applicant's divorce and a downturn in the economy, which were circumstances beyond her control. However, he stated that she had not produced any documentation to show responsible action in regard to her debts. He specifically stated that Applicant had not provided documentary corroboration to show a basis for any disputes of her debts. The Judge noted language in the FORM that placed Applicant on notice of her duty to provide evidence in support of her claims of debt resolution or to dispute the legitimacy of her debts. He stated that the only evidence of debt resolution is Applicant's uncorroborated statements. In the whole-person analysis, the Judge reiterated his findings about Applicant's divorce. However, he stated that she had not addressed the specific allegations in the SOR, persisting with the belief that her ex-husband was solely responsible for their joint debts.

Discussion

Applicant's brief includes references to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. She contends that the Judge did not consider all of the evidence. She states that her debts were jointly incurred with her ex-husband and that she had discharged her share of the obligations. She cites to her having hired a law firm to assist in resolving her problems and lists her professional achievements, her education, etc. She also contends that the debts arose a long time ago and, therefore, have been mitigated through the passage of time. Applicant's arguments on appeal are not enough to rebut the presumption that the Judge considered all of the evidence in

the record. Neither are they enough 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. 15-08711 at 3 (App. Bd. Aug. 24, 2017). We note Applicant’s argument about the age of her debts. However, unpaid debts are an ongoing course of conduct for the purpose of DOHA adjudications. *See, e.g.*, ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

In a proceeding under the Directive, it is the applicant’s duty to present evidence in mitigation of the concerns raised in the SOR. Directive ¶ E3.1.15. In the case before us, the Judge’s conclusion that Applicant had not presented sufficient mitigating evidence is sustainable. “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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board