

KEYWORD: Guideline F

DIGEST: From our review of the record, Applicant was neither denied an opportunity to present evidence nor was she misled about her opportunity to do so. Additionally, even if Applicant had presented the dispute letters, such evidence would not likely have had any affect on the outcome of this case because other debts that she did not dispute—a foreclosed mortgage, a loan on a repossessed vehicle with a balance of about \$15,400, and a credit union debt placed for collection for about \$4,661—were sufficient to support the unfavorable clearance decision. Adverse decision affirmed

CASENO: 16-02941.a1

DATE: 12/29/2017

DATE: December 29, 2017

In Re:))	
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-----))	ISCR Case No. 16-02941
))	
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 November 1, 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). Department Counsel requested a hearing. On July 31, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 SOR alleged 11 delinquent debts. The Judge found in favor of Applicant on a debt that she claimed she paid and on a mortgage for which she “advised collateral was collected to resolve debt.” Decision at 3, citing Government Exhibit (GE) 2 at 50. The Judge found against Applicant on the remaining debts, which included another mortgage and a loan on a vehicle that was repossessed. Applicant disputed a number of the debts, but did not provide copies of the disputes. In his analysis, the Judge noted that Applicant experienced conditions beyond her control, but did not prove she acted responsibly under the circumstances. Specifically, she elected to stop paying some of her debts in 2011 even though she was employed. The Judge also highlighted the absence of corroborating documentation.

In her appeal brief, Applicant argues that all of her alleged debts, with the exception of the loan for the repossessed vehicle, were resolved. She also claims the creditor of the repossessed vehicle is not interested in getting paid. Decision at 4, citing Tr. at 47. Her appeal brief emphasizes that all of the alleged debts, except for the repossessed vehicle loan, no longer appear on her most recent credit reports. In the decision, the Judge discussed Applicant’s reliance upon the absence of the debts in her credit reports to mitigate the security concerns and cited ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016) for the position that debts dropping off credit reports is not meaningful evidence of debt resolution. We find no error in the Judge’s analysis. Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved. *See, e.g.*, ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015).

Applicant also contends that she was shocked to read the Judge’s statement in the decision that she did not provide copies of debt disputes. She claims that she had the dispute letters with her at the hearing, “stated numerous times” during the hearing that the Department Counsel or Judge could have the letters, but thought she could not offer additional documents without permission once the hearing stated. Appeal Brief at 1. At the beginning of the hearing, the Judge did mention that the Directive provides that the parties shall serve one another with copies of proposed documentary

evidence (Tr. at 11),¹ which may have lead Applicant to believe that she could not offer additional documents once the hearing began. However, no statement was made by either the Judge or Department Counsel during the hearing that Applicant could not offer additional documents. At the hearing, the following exchange occurred:

[Department Counsel]: Do you have anything from the credit bureau report, or credit bureau saying that they are actively removing [an alleged debt] . . .

[Applicant]: I believe so. I have, I do have the paperwork that came back from the credit report. . . . I do have that stack of which ones they removed. They were deleting or removing from my credit report.

[Department Counsel]: Because a debt falling off a credit report due to time is different than actively removing it. And you're saying that they removed it?

[Applicant]: I do have, yes, I do have some documents for some of these accounts that actually were removed based on disputes from the credit bureau.²

Neither the Judge nor Department Counsel asked whether Applicant could produce the dispute letters. Contrary to Applicant's contention, the transcript does not reflect that she "stated numerous times" that Department Counsel or the Judge could have the dispute letters. Moreover, she did not specifically state that she had those letters with her at the hearing. At the end of his questioning of Applicant, the Judge asked if "there was anything else that you would like to say or present today." Tr. at 48. In response to that question, Applicant made an additional statement, but she did not offer the dispute letters into evidence. The record of the proceeding was not left open for Applicant to submit additional matters.

From our review of the record, Applicant was neither denied an opportunity to present evidence nor was she misled about her opportunity to do so. Additionally, even if Applicant had presented the dispute letters, such evidence would not likely have had any affect on the outcome of this case because other debts that she did not dispute—a foreclosed mortgage, a loan on a repossessed vehicle with a balance of about \$15,400, and a credit union debt placed for collection for about \$4,661—were sufficient to support the unfavorable clearance decision.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. In her arguments, she cites, for example, to her unemployment, her military service, and her character evidence. 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

¹ Directive E3.1.13 states, "As far in advance as practical, Department Counsel and the applicant shall serve one another with a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge."

² Tr. at 31.

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. 15-08684 at 2 (App. Bd. Nov. 22, 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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