

KEYWORD: Guideline F

DIGEST: On this record and, in the absence of any objection to Applicant’s personal subject interview (PSI) or indication that it contained inaccurate information, the Judge did not err by admitting and considering the PSI. Applicant has not identified any harmful error in the Judge’s decision. Adverse decision affirmed.

CASE NO: 16-03126.a1

DATE: 01/24/2018

DATE: January 24, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-03126
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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 20, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) and 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 October 17, 2017, after

considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged under Guideline G that Applicant was arrested for, and pled guilty to, driving while intoxicated (DWI) in 2015; and she was arrested for DWI in 2004 and pled guilty to obstructing a highway passageway. Under Guideline F, the SOR alleged that Applicant had an on-going Chapter 7 bankruptcy that was filed in 2016, she received a Chapter 7 bankruptcy discharge in 2006, and she had three charged-off debts totaling about \$22,180. The Judge found in favor of Applicant on the allegation regarding the 2004 offense and against her on the other allegations.

In the appeal brief, Applicant contends that she did not see the footnote in Department Counsel's File of Relevant Material (FORM) discussing whether the Judge may consider her Personal Subject Interview (PSI), that she would not have understood that footnote had she seen it, and that she would have objected to the Judge's consideration of that document had she understood the footnote. The footnote stated:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) (Item 4) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to the [FORM], you can comment on whether PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you may make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you may object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to this FORM, or if you do not respond to this FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Applicant's claim that she did not see and would not have understood the footnote is not persuasive on this record. The footnote appeared on the first page of the FORM and, as reflected above, advised Applicant in bold, capital letters that it was an "important notice." In the main text of the FORM, Applicant was also advised of her opportunity to submit objections or material that she wanted the Judge to consider.¹ Applicant submitted a response to the FORM in which she neither

¹ The last paragraph of the main text of the FORM stated:

NOTICE TO APPLICANT

Department of Defense Directive 5220.6, Paragraph E3.1.7, provides that you be provided with a copy of all relevant and material information (FORM) that could be adduced at the hearing, and you shall have 30 days from the receipt of this information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information with 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination based solely on this File of Relevant Material. Additional information concerning your rights and responsibilities is provided in Directive and in the cover letter accompanying this document.

objected to the PSI nor indicated that it contained any information that was incorrect. Applicant's response to the FORM (and her appeal brief) are sufficiently sophisticated to undermine any claim that she would not have understood the footnote. On this record and, in the absence of any objection to the PSI or indication that it contained inaccurate information, the Judge did not err by admitting and considering that document. *See, e.g.*, ISCR Case No. 15-01807 at 3 (App. Bd. Dec. 16, 2016).

Applicant also contends that the Judge's decision is arbitrary, capricious, and contrary to law because the facts in two other Hearing Office decisions are similar to hers and resulted in the applicants being granted security clearances. This argument is unpersuasive. First, the facts in the cited cases are distinguishable from Applicant's. For example, neither of the cited cases involved an applicant with SOR allegations under both Guidelines G and F. Second, each case must be decided upon its own merits. Directive, Encl.2, App. A ¶ 2(b). Third, Hearing Office decisions are neither binding on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

Applicant further contends that she was unable to present evidence because it either "did not exist" or she was unable to obtain it before the deadline for her response. Appeal Brief at 1. These contentions do not assert appealable issues, *i.e.*, harmful errors by the Judge. Regarding the latter contention, we note Applicant did not request any extension of the deadline for responding to the FORM.

Additionally, Applicant stated the Judge "mistakenly assumed that all of my debt was discharged in the 2016 bankruptcy filing. I reaffirmed my debt on my house, my car, and a loan account with the credit union." Appeal Brief at 3. This allegation of error is without merit. In discussing Applicant's latest bankruptcy, the Judge specifically found "Applicant reaffirmed her mortgage loan and her car loan and signature loans with credit union X." Decision at 7.

The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. In making those arguments, she highlights evidence that is favorable to her. 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

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

We note the cover letter of the FORM also contained a similar advisement as that provided in this quoted paragraph.

‘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