

KEYWORD: Guideline F

DIGEST: While the Judge may have erred in not addressing aspects of Applicant’s identity theft claim, such errors were harmless, i.e., not likely to affect the outcome of the case. In his security clearance applications (SCAs) submitted in 2013 and 2015, Applicant disclosed that he had delinquent debts, including the accounts identified in SOR ¶¶ 1.d (about \$4,300), 1.e about \$3,700), 1.g (about \$69,000), and 1.h (about \$960). In his SCAs, Applicant explained the reasons why those debts became delinquent. In short, the record contains enough evidence to establish that the debts disclosed in the SCAs were not part of the claimed identity theft. Adverse decision affirmed.

CASENO: 17-00541.a1

DATE: 02/28/2018

DATE: February 28, 2018

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In Re:)	
)	
-----)	ISCR Case No. 17-00541
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 24, 2017, 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 November 17, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's unfavorable decision.

The Judge's Findings of Fact

The SOR alleged that Applicant had nine delinquent debts totaling over \$100,000. Applicant denied each allegation and claimed he was the victim of identity theft in 2011. When he learned of the theft, he filed a police report and contacted the credit reporting bureaus. He contends his credit reports contain inaccurate and erroneous information. However, during his background interview, he recognized, acknowledged, and addressed each of the alleged debts. He also knew when he opened each account and indicated he planned to pay each debt.¹

The Judge's Analysis

Applicant's identity theft in 2011 did not involve any of the alleged debts. He incurred those debts because of the 2008 recession or his inability to make the payments on them. He has not acted reasonably in resolving the debts. He has not provided proof that he has paid any of them. It appears he is simply waiting for them to fall off his credit report due to their age. "He has not submitted any compelling evidence that he has established a meaningful track record of repayment or that he has a basis to dispute the legitimacy of these delinquent debts." Decision at 6.

Discussion

In deciding whether the Judge's rulings or conclusions are arbitrary or capricious, we will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 14-02563 at 3 (App. Bd. Aug. 28, 2015).

Applicant contends that the Judge erred in her analysis of his claim that he was a victim of identity theft in 2011. We note the Judge did not address aspects of the claimed identity theft. For

¹ Even though the Judge made the general finding that Applicant knew when he opened each account, she made contradictory findings in discussing individual accounts by noting "Applicant was not sure when he opened the account" for a number of the alleged debts.

example, the Judge did not address that Applicant submitted a Felony Complaint for Arrest Warrant filed in June 2011 that identified him as the victim of identity theft occurring on or about January 2011. It is fair to say that the arrest warrant would have been supported by probable cause (*i.e.*, a reasonable basis for believing) that the alleged crimes occurred.² Additionally, the Judge did not discuss that credit reports in the record reflect the debts listed in SOR ¶¶ 1.a through 1.e were opened between December 2010 and December 2011, *i.e.*, the approximate time of the claimed identity theft.³

While the Judge may have erred in not addressing aspects of Applicant's identity theft claim, such errors were harmless, *i.e.*, not likely to affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). In his security clearance applications (SCAs) submitted in 2013 and 2015, Applicant disclosed that he had delinquent debts, including the accounts identified in SOR ¶¶ 1.d (charged-off account for about \$4,300), 1.e (charged-off account for about \$3,700), 1.g (past-due account for about \$25,600 with a total balance of about \$69,000),⁴ and 1.h (past-due account for about \$960). In his SCAs, Applicant explained the reasons why those debts became delinquent. In short, the record contains enough evidence to establish that the debts disclosed in the SCAs were not part of the claimed identity theft, that Applicant has not taken any meaningful steps to resolve those debts, and that those debts were sufficient to support the Judge's adverse clearance decision even though other alleged debts might have been the result of identity theft.

Applicant also contends that the Judge did not consider that he successfully disputed some of the debts. In answering the SOR and in responding to Department Counsel's File of Relevant Material (FORM), Applicant provided portions of credit reports that showed four of the alleged debts (SOR ¶¶ 1.b, 1.c, 1.f, and 1.i) were "deleted" from his credit reports and another debt was listed as "no longer on file" (SOR ¶ 1h). Those documents also reflected that the debt in SOR ¶ 1.a was "deleted" by one credit reporting agency and "verified" by another. The reasons why the credit reporting agencies deleted the debts were not specified. *See, e.g.*, ISCR Case No. 03-05197 at 3 (App. Bd. Oct. 14, 2004) for the proposition that the mere absence of a debt from a credit report is of little weight because the reason for such an absence is speculative. Additionally, even if some of those debts were deleted because they were product of Applicant's claimed identity theft, other alleged debts were established as Applicant's responsibility, as discussed above, and were sufficient

² We recognize that, once an individual has become a victim of identity theft, his or her personally identifiable information may still be passed to unauthorized third parties even after initial perpetrators of that theft have been identified, arrested, or convicted. One of the defendants identified in the arrest warrant is a public figure who was convicted of identity theft in that jurisdiction in 2012.

³ We also note that some statements reported in Applicant's summary of background interview were contradicted by the credit reports in the record. Specifically, the summary of interview reflects that the accounts identified in SOR ¶¶ 1.a and 1.d were opened in 2006 and the account in ¶ 1.e was opened in 2005, while the credit reports in the record indicate those accounts were opened in either December 2011 (SOR ¶¶ 1.a and 1.d) or January 2012 (SOR ¶ 1.e). These contradictions between the summary of the background interview and the credit reports causes one to question the amount of weight that should be given to the information in the summary of interview, which reflected that Applicant was confronted with the delinquent account information during the interview.

⁴ The debt in SOR ¶ 1.g was a secured line of credit that had a date of last activity of December 2011.

to support the Judge’s adverse clearance decision. In this regard, we note the credit reports indicated that the debts in SOR ¶¶ 1.d and 1.e were “verified as accurate” and the debt in ¶ 1.g was listed as “Dispute Resolved - Consumer Disagrees.”

Applicant also argues that the Judge did not consider all of the record evidence and misweighed the evidence. His arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-01717 at 4 (App. Bd. Jul. 3, 2017). We give due consideration to the Hearing Office case that Applicant has cited in his brief, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.*

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: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

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