

KEYWORD: Guideline F

DIGEST: Applicant contends that the SOR contained incorrect information that led to inaccuracies in the Judge's decision and challenges a number of the Judge's findings of fact. These and her other challenges are not sufficient to establish that the Judge committed any harmful errors in his findings of fact or conclusions. Adverse decision affirmed.

CASENO: 17-02394.a1

DATE: 05/16/2018

DATE: May 16, 2018

_____)	
In Re:)	
)	
-----)	ISCR Case No. 17-02394
)	
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 August 3, 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 hearing. On February 15, 2018, after considering the record, Administrative Judge LeRoy F. Foreman 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 and Conclusions

The SOR contains 13 allegations. The Judge found against Applicant on five delinquent debts and on an allegation that she failed to file her Federal income tax returns for 2012-2016 as required. Regarding the delinquent debts, the Judge found that Applicant enrolled in a rehabilitation program for two student loans a week after the hearing and noted a lack of evidence of payments towards the other debts. The Judge concluded that Applicant did not act responsibly regarding her unpaid debts and that she offered no persuasive explanation for her tax filing deficiencies.

Discussion

Applicant contends that the SOR contained incorrect information that led to inaccuracies in the Judge’s decision and challenges a number of the Judge’s findings of fact. As examples of those challenges, she argues:

(1) There was an error in the amount of her and her husband’s monthly income on an IRS form that she offered into evidence and the Judge made a finding based on that incorrect information; and

(2) The SOR incorrectly alleged that she had a credit card debt that was charged off when a recent credit report reflected the debt was a collection account and indicated a recent payment was made on that account.

These and her other challenges are not sufficient to establish that the Judge committed any harmful errors in his findings of fact or conclusions. *See, e.g.*, ISCR Case No. 16-01329 at 3 (App. Bd. Apr. 11, 2018) (An error is harmless if it did not likely affect the outcome of the case). In this regard, we note that her challenges do not establish that the Judge erred in his foremost conclusion that Applicant failed to present sufficient evidence to mitigate all of the alleged security concerns.

In the decision, the Judge noted that Applicant and her husband owed the IRS about \$13,000 for 2016. This past-due tax debt was not alleged in the SOR, and Applicant claims it had an undue influence on the Judge’s decision. In discussing this debt, however, the Judge cited to ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) for the proposition that non-alleged debts can be considered for limited purposes such as in assessing an applicant’s credibility; in evaluating evidence of extenuation, mitigation, or changed circumstances; in considering whether an applicant

demonstrated successful rehabilitation; and in applying the whole-person concept. Decision at 8, n.4. Applicant has not shown that the Judge considered the non-alleged debt for any impermissible purpose.

We further note that Applicant’s appeal brief contains information that was not provided to the Judge for consideration. Such information constitutes new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. Her other arguments amount to a disagreement with the Judge’s weighing of the evidence. Those arguments, however, are not sufficient 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. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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