

KEYWORD: Guideline F

DIGEST: We examine a Judge’s rulings on motions, including those for continuances, for an abuse of discretion. Adverse decision affirmed.

CASENO: 18-00310.a1

DATE: 12/19/2018

DATE: December 19, 2018

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 18-00310
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman , Esq., Chief Department Counsel

**FOR APPLICANT**

Lance R. Claery, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 28, 2018, 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 September 7, 2018, after the hearing, 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 issues on appeal: whether Applicant was denied due process; whether the Judge erred in admitting two of the Government’s exhibits; and 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 Analysis**

Applicant has served on active duty as well as in the National Guard. Applicant is seeking a clearance in connection with his employment by a Defense contractor. His SOR lists numerous delinquent debts, for such things as a vehicle repossession, a utility bill, credit cards, and numerous other charged-off or collection accounts. The debts total more than \$50,000. In addition to these delinquent debts, the SOR alleges that Applicant was discharged in Chapter 13 bankruptcy in late 2005. The Judge found that all but two of the SOR debts were unresolved.

Applicant attributed his financial problems to a number of things: a diminution in income following his discharge from the military; expenses incurred as a result of his wife’s car accident and two DUIs; his financial support for his parents; and an increase in his mortgage payments. Applicant earns about \$110,000 a year and his wife an additional \$20,000. Applicant has not adjusted his lifestyle to his income and lives paycheck to paycheck. He has about 27 cents in his savings account. However, having caught up on his house payments, Applicant believes that he can devote attention to debt reduction.

The Judge resolved two debts, including his mortgage arrearage, in his favor. However, for the balance of the SOR allegations she entered adverse findings. She concluded that, despite his many difficulties, Applicant has not demonstrated responsible action in regard to his debts.

### **Discussion**

Applicant contends that the Judge denied him due process, insofar as she denied a motion for a continuance of the hearing. He contends that this ruling “precluded [him] from fully preparing his defense at his hearing.” Appeal Brief at 14. We examine a Judge’s rulings on motions, including those for continuances, for an abuse of discretion. *See, e.g.*, ISCR Case No. 09-01175 at 3 (App. Bd. May 11, 2010).

Applicant cites to a series of email exchanges, which are included in the record. On July 27, 2018, Applicant sent a message to a DOHA official requesting a continuance of the hearing, which

was scheduled for August 14, 2018. Applicant stated that he was requesting the continuance because he was going to be performing temporary duty away from his home station and would not return until August 10, 2018. He stated that he needed extra time in which to prepare his case. Applicant's request was forwarded to the Judge on July 30, 2018, and, on the same day, the DOHA official advised Applicant that the Judge had denied the request, although the Judge did change the starting time for the hearing.

At the beginning of the hearing, the Judge inquired of Applicant if he were aware of his right to counsel and whether he was prepared to proceed without one. Applicant responded that he was aware of this right and that he was ready to proceed *pro se*. Tr. at 5. A bit later, after giving Applicant an opportunity to read pertinent parts of the Directive, she asked him again if he was prepared to go forward with the hearing, and he responded "Yes." Tr. at 12. During the course of the hearing, Applicant offered three documents, each of which were admitted into evidence. Tr. at 56-59. At the end, Applicant stated that he had nothing else that he wanted to say and that he rested his case. Tr. at 67 and 73-4. Applicant did not state to the Judge that he had been unable to prepare his case or that there was other evidence that he would have presented had he been granted the continuance. Applicant's appeal brief does not cite to anything specific that he could have presented, although he has attached to his brief three written character references.<sup>1</sup> He does not explain why these documents could not have been obtained prior to the hearing. In any event, given the Judge's analysis as described above, we find no reason to conclude that if these letters had been presented the Judge would have arrived at a different conclusion. All in all, we find no reason to believe that the Judge's ruling denied Applicant a fair opportunity to prepare. After considering the record as a whole, we see no abuse of discretion in the Judge's ruling on Applicant's motion for a continuance.

Applicant argues that the Judge erred by admitting two credit reports. He states that these documents were lacking appropriate authentication. However, as Applicant acknowledges in his brief, he stated to the Judge that he had no objection to these documents. Tr. at 17. Therefore, he waived this issue for purposes of appeal. Even if Applicant had not waived the objection, however, we note that credit reports are generally admissible as part of the Government's case in chief. *See, e.g.*, ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). A credit report qualifies as a record compiled or created in the regular course of business and, therefore, is admissible even without an authenticating witness, in accordance with Directive ¶ E3.1.20. We note that there is nothing on the face of the challenged documents to suggest that they are other than what they appear to be. The Judge did not abuse her discretion by admitting the challenged credit reports.

Applicant cites to various aspects of the record that he believes demonstrate mitigation of the concerns raised by the SOR. However, a 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 show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02463 at 2 (App. Bd. Sep. 10, 2018).

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<sup>1</sup>Although these character references are outside the record, we will consider them to the extent necessary to resolve Applicant's due process argument. *See, e.g.*, ISCR Case No. 17-01472 at 2 (App. Bd. Aug. 6, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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