

KEYWORD: Guideline F

DIGEST: The value of an applicant expertise to a defense contractor or military service is not relevant or material to determining the applicant's eligibility for a security clearance. Adverse decision affirmed.

CASENO: 06-20062.a1

DATE: 07/15/2008

DATE: July 15, 2008

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In Re:)	
)	
-----)	ISCR Case No. 06-20062
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 22, 2007, DOHA 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 the case be decided on the written record. On April 7, 2008, after considering the record, Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law.

Applicant argues that the Judge should have found her financial situation to be mitigated. Applicant identifies a number of statements in the Judge’s decision which she considers to be error. Applicant also points out her abilities and contributions to the defense of the United States. She requests in the alternative that she be granted “approval with [a] warning that future incidents of a similar nature may result in revocation of access.” Applicant’s Brief at 3, quoting Directive ¶ E2.2(f).

In her response to the government’s SOR, Applicant admitted all but four of the alleged debts. Her admissions established the government’s case. The burden then shifted to Applicant to rebut, explain, extenuate, or mitigate the facts she admitted. The ultimate burden of persuasion to obtain a favorable security clearance decision rested with Applicant. *See* Directive ¶ E3.1.15. In her responses, Applicant provided information about the origin of her financial difficulties. She stated that she was paying her current obligations in a timely manner, but (with the exception of one debt not listed in the SOR) was not making payments on her past-due debts and intended to allow them to drop from her credit report with the passage of time. At that time, she also noted some attempts to improve her financial situation, including consultation with a credit counselor, who advised her to allow the old debts to drop off, as noted above, as a strategy to raise her credit score.

In her decision, the Judge referred to the information Applicant provided. The Judge concluded that Applicant’s financial situation was not mitigated because of “insufficient information to establish that Applicant showed good faith in the resolution of her debt.” Decision at 6. Applicant contends that the Judge did not give sufficient weight to Applicant’s mitigating evidence. 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*. An applicant’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. 07-00553 at 2 (May 23, 2008).

In her appeal brief, Applicant identifies a number of statements in the Judge’s decision which she considers to be errors.¹ Applicant is correct that the Judge erred in stating that Applicant made

¹The Board may not consider new evidence. Directive ¶ E3.1.29. Therefore, information not already in the record, including changes in account balances due to the passage of time, may not be taken into consideration.

payments on a particular debt (not listed in the SOR) only until July 2004. Decision at 2. Applicant told an investigator that she made payments only until July 2004 on a related but separate debt (SOR ¶ 1.m). The identified error is harmless in light of Applicant's overall financial situation, since it is unlikely that correction of that error would have lead to a different result in Applicant's case. *See, e.g.*, ISCR Case No. 03-20638 at 3 (App. Bd. Apr. 22, 2005). The other statements cited by Applicant are not in error, since they are reasonable characterizations or are otherwise supported by record evidence.²

Applicant also argues that she has unique abilities and that denial of her security clearance will be detrimental to the government in waging the Global War on Terror. The Board has held that the value of an applicant's expertise to a defense contractor or military service is not relevant or material to determining the applicant's eligibility for a security clearance. *See, e.g.*, ISCR Case No. 99-0109 at 6 (App. Bd. Mar. 1, 2000). An applicant's expertise is not a measure of whether that applicant demonstrates the high degree of judgment, reliability, and trustworthiness that must be reposed in persons entrusted with classified information. *Id.*

In the alternative, Applicant requests that she be granted "approval with a warning that future incidents of a similar nature may result in revocation of her clearance." Directive ¶ E2.2(f). The Board does not have authority to review cases *de novo* to consider such a request. Accordingly, because the Judge's adverse decision is sustainable, the Board need not reach this issue.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael D. Hipple
Michael D Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

²As regards the obtaining of a security clearance, Applicant's reliance on the advice of her credit counselor is misguided. A Judge is not bound to accept such advice as relevant to Applicant's eligibility for a security clearance, since a strategy to raise a credit score does not necessarily satisfy the government's security concerns.

Signed: Jean E. Smallin _____
Jean E. Smallin
Administrative Judge
Member, Appeal Board