

KEYWORD: Guideline F

DIGEST: A party is required to raise claims of error with specificity. Adverse decision affirmed.

CASENO: 12-05005.a1

DATE: 07/22/2014

DATE: July 22, 2014

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Corey Williams, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 9, 2013, 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 that the case be decided on the written record. On May 1, 2014, after the close of the record, Defense Office of

Hearings and Appeals (DOHA) Administrative Judge Shari Dam denied Applicant's request for a security clearance. Applicant 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. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings: Applicant is 31 years old. He is divorced with no children. After leaving the military in the late 2000's, he was unemployed for about six months. Applicant's delinquent debts began accumulating between 2003 and 2011. At one point Applicant had 11 delinquent debts totaling \$28,560. To date, he has resolved about \$2,928 of the delinquent debt. Six of his debts remain unresolved. His net monthly income is \$5,623 and expenses are \$1,536. He has monthly payments of \$1,156 on three debts, leaving about \$2,931 remaining. Applicant has not participated in credit counseling. He does not have a solid plan or budget for resolving his debts.

Applicant indicated that many accounts became delinquent as a consequence of unemployment, separation from, and eventual divorce from his wife. He also attributed his situation to his long military deployments, during which his wife opened credit card accounts without his knowledge. Applicant assumes full responsibility for his delinquent debts and admits that he should have paid them off sooner, and it was his fault for having a slack attitude. He indicated he would pay all his debts and would never put this country at risk.

The Judge reached the following conclusions: Applicant's delinquent debts began in 2003 and continue to date. Six of them remain unresolved. He failed to demonstrate that such problems are unlikely to continue, recur, or be resolved, calling into question his reliability and trustworthiness. His unemployment, divorce and the actions of his wife during his deployments may have been circumstances beyond his control, but he did not provide evidence that he attempted to responsibly address or manage the delinquent debts when he became aware of them in 2012. Applicant did not provide evidence that he participated in credit or financial counseling. For over two years, he has been on notice that his delinquent debts could jeopardize his security clearance. Despite that knowledge, he has taken minimal steps to resolve his financial obligations or establish a credible plan for managing them. His lack of action on these matters raises questions about his trustworthiness, reliability and judgment.

Applicant argues that the Judge did not properly consider all the evidence in the case, and states that he submitted documents that were not considered. He asserts that he presented proof of attempts to settle, repay, or validly dispute each and every debt listed on the SOR. He maintains that the Judge's failure to consider all the evidence resulted in a failure to consider the mitigating conditions in proper fashion. Applicant's arguments fail to establish error on the part of the Judge.

A Judge is presumed to have considered all the evidence in the record unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Applicant fails to overcome these presumptions. Moreover, Applicant does not specify the

documents he claims were overlooked by the Judge. There is no presumption of error below. *See, e.g.*, ISCR Case No. 00-0339 at 3 (App. Bd. Mar. 22, 2001). Applicants are required to raise claims of error with specificity. *See* ISCR Case No. 10-06437 at 3 (App. Bd. Mar. 11, 2013). In the present case, Applicant's claims of error lack the requisite detail to meet the burden of establishing error. The evidentiary record in support of mitigation in this case is not extensive. Applicant's claim that there is evidence establishing that he is making attempts to settle, repay or honestly dispute each and every debt alleged in the SOR is not supported by the record. The Judge's conclusion that Applicant failed to establish that he had taken timely and meaningful steps to address his delinquent debts is sustainable.

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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant's appeal brief, in part, argues for an alternate interpretation of the record evidence.

In this case, the Judge made sustainable findings that Applicant had a significant history of not meeting financial obligations. She noted that despite Applicant's resolution of some of the debts, he still had a substantial amount of indebtedness. The Judge noted that two years after Government investigators indicated their concern with the state of his finances, Applicant was still without an established plan to resolve the remaining arrearages. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. *See, e.g.*, ISCR Case No. 05-07747 at 2 (App. Bd. Jul. 3, 2007). A review of the Judge's decision reveals that, regarding Guideline F, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in her analysis. The Judge offered a narrative explanation as to why the disqualifying conduct under Guideline F was not mitigated. The Board concludes that the Judge appropriately weighed the Guideline F mitigating conditions against the seriousness of the disqualifying conduct.

In support of his appeal, Applicant points to numerous decisions by the Hearing Office which he argues support his request for a favorable determination. The Board gives due consideration to those cases. However, each case "must be decided upon its own merits." Directive, Enclosure 2 ¶2(b). Moreover, one of the Hearing Office cases that Applicant cites was reversed on appeal. Nothing in the decisions cited by Applicant demonstrates error on the part of the Judge in this case.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board