

KEYWORD: Guideline F

DIGEST: Although Department Counsel correctly points out that the Judge's analysis and application of the statute of limitation is erroneous in the security clearance adjudication context, the error is harmless in this case in light of the totality of the record evidence. Favorable decision affirmed.

CASENO: 07-11814.a2

DATE: 12/29/2008

DATE: December 29, 2008

In Re:)
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 -----) ISCR Case No. 07-11814
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)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 26, 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 a hearing. On May 14, 2008, after the hearing, Administrative Judge Mary E. Henry granted Applicant’s request for a security clearance. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On August 29, 2008, the Board remanded the case to the Judge for a new decision. On September 16, 2008, the Judge issued her decision on remand. Department Counsel again filed a timely appeal pursuant to the Directive.

Department Counsel raised the following issues on appeal: whether certain of the Judge’s findings of fact are supported by substantial record evidence and whether the Judge’s whole-person analysis is unsustainable. Finding no harmful error, we affirm.

The Judge made the following pertinent findings of fact:

Applicant has numerous delinquent debts arising from a romantic relationship that she terminated in 2000. Although she attempted to pay the debts, she defaulted on some of them, receiving no assistance from her former partner. While Applicant acknowledges some of the debts, she disagrees with others. She completed an Associate Degree in Applied Science in 2005 and “incurred no unpaid debts for her education.” Decision at 3. She has purchased a modular home for herself and her children and is current on her mortgage payments. She has paid off a recent automobile loan and has opened credit card accounts in the three years preceding the decision, for which she makes timely payments.

In performing her whole-person analysis, the Judge relied on record evidence of Applicant’s having (1) achieved financial stability; (2) lived within her means in recent years; (3) purchased a home; (4) earned a college degree; and (5) established a good record of employment. The Judge also considered, *inter alia*, the extent to which Applicant’s financial problems were rooted in the conduct of her former partner and that, as her children’s sole provider, she has had to make financial choices with an eye toward their well-being. The security concern under Guideline F is that delinquent debt “may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations[.]” Directive ¶ E2.18. Given the record before her, the Judge has articulated a rational explanation for her conclusion that Applicant had mitigated the security concern in her case. *See 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)).

Department Counsel correctly points out that the Judge’s analysis and application of the statute of limitations is erroneous in the security clearance adjudication context. In this case, however, the error is harmless, viewed in light of the totality of the record evidence.

Order

The Judge's favorable security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

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

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