

KEYWORD: Guideline F

DIGEST: The Board does have the jurisdiction or authority to pass judgment on the wisdom or authority of provisions of the Directive. Adverse decision affirmed.

CASENO: 09-00447.a1

DATE: 07/16/2010

DATE: July 16, 2010

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In Re:)	
)	
-----)	ISCR Case No. 09-00447
)	
)	
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 January 25, 2010, 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 13, 2010, after the hearing, Administrative Judge Joan Caton Anthony 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 the Judge lacked the requisite impartiality; whether certain of the Judge’s findings of fact were in error; whether the Judge failed to consider or mis-weighed record evidence; and whether the Judge’s adverse decision is arbitrary, capricious, or contrary to law. Finding no harmful error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a divorced mother of two. She holds a Master of Science degree. Her former husband, an immigrant, was deported to his home country due to criminal activity. He has not provided child support.

Applicant has numerous delinquent debts, for telephone services, medical bills, etc.¹ Her delinquencies date back to at least 2001. She has not had financial counseling. Although her debt situation has been affected by her divorce and by periods of unemployment, the Judge concluded that Applicant had failed to demonstrate that circumstances beyond her control fully account for her problems. The Judge noted, for example, that a budget submitted by Applicant indicated that she spent more each month than she takes in, relying on her father for financial assistance.

We construe Applicant’s brief as contending that the Judge was biased against her, specifically due to her being a single mother. There is a rebuttable presumption that a Judge is fair and impartial, and a party seeking to rebut that presumption has a heavy burden of persuasion on appeal. *See, e.g.*, ISCR Case No. 08-01306 at 4 (App. Bd. Oct. 28, 2009). We have reviewed the Judge’s decision in light of the record as a whole, paying particular attention to the Judge’s conduct of the hearing. We find nothing in the record that would lead a reasonable person to question the fairness and impartiality of the Judge. We resolve this issue adversely to Applicant.

Applicant also argues that Guideline F is discriminatory against those who are not “rich, white, and well off.” We have repeatedly noted that our jurisdiction and authority are limited. Nothing in the Directive gives the Board the jurisdiction or authority to pass judgment on the guidance provided to us or to entertain challenges to the wisdom or authority of provisions of the Directive. *See, e.g.*, ISCR Case No. 04-10821 at 2 (App. Bd. Jul. 19, 2006); ISCR Case No. 09-03724 at 2 (App. Bd. Mar. 23, 2010). Furthermore, we observe that there is nothing in the plain

¹The Judge also found that Applicant owes for two student loans, in the amounts of \$54,145 and \$47,338 respectively. These debts are no longer in deferment, and Applicant had not made payments for three months as of the close of the record. They were not alleged in the SOR but are relevant to the issue of mitigation.

language of the Guideline to support Applicant's contention. *See, e.g.*, ISCR Case No. 05-00951 at 3 (App. Bd. May 19, 2006).

Applicant challenges the Judge's findings of fact. For example, she challenges the Judge's finding that she overspends her monthly income by approximately \$1,600. Applicant also challenges the statement quoted above concerning her having been steadily employed for two years. She asserts that, as a contract employee, there have been periods during the past two years in which she has not worked. Regarding the first challenge, Applicant submitted an exhibit containing budget information for a single month. This exhibit reflects expenditures that exceed Applicant's income, though by a slightly lesser amount than that found by the Judge. Therefore, the Judge's finding as to the specific monetary amount is erroneous. However, this exhibit does support the Judge's conclusion that Applicant has failed to demonstrate a reasonable plan to discharge her debts.

Concerning the second challenge, we have examined Government Exhibit 1, Applicant's security clearance application, at 13. This document states that Applicant has been employed by a named company since July 2008. Accordingly, it supports the challenged finding. The Judge's error concerning the amount by which Applicant overspent her income is not likely to have affected the outcome of the case. Therefore, it is harmless. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009) for definition of harmless error. The Judge's material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.")

In support of her appeal, Applicant submits new evidence not contained in the record, for example information about debt repayment occurring after the close of the record, which we cannot consider. *See* Directive ¶ E3.1.29. (No new evidence shall be received or considered by the Appeal Board). *See also* ISCR Case No. 08-06875 at 2 (App. Bd. Oct. 29, 2009). Applicant contends that the Judge either did not consider or that she mis-weighed favorable record evidence, for example Applicant's debt repayment plans and her excellent work ethic. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). Applicant's presentation on appeal has not rebutted that presumption. Neither has it demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-21819 at 2 (App. Bd. Aug. 13, 2009).

After reviewing the record, we conclude 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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. 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