

KEYWORD: Guideline F, Guideline e

DIGEST: The Judge's challenged findings are supported by substantial record evidence. Adverse decision affirmed.

CASENO: 10-01814.a1

DATE: 02/17/2012

DATE: February 17, 2012

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**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 5, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive).<sup>1</sup> Applicant requested a hearing. On December 7, 2011, after the hearing, Administrative Judge Robert E. Coacher 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 conclusions are 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 of fact: Applicant is 42 years old. She is married. She has four children from earlier relationships. She receives \$2,100 monthly child support payments. She served in the Army for 13 years. She was separated for medical reasons in 2006. She had a brief period of unemployment from July to August 2007. Applicant’s financial troubles are attributed to raising her children, mostly as a single parent without support from the children’s fathers. It was only recently, in January 2011, that she began receiving child support for two of her children. She currently makes \$82,000 per year and her husband makes \$48,000. She has a \$1,200 surplus at the end of the month after paying her expenses.

Applicant has paid four debts listed in the SOR. Applicant is making payments on an \$895 cable service debt. Regarding a student loan debt for \$6,226, Applicant claims she has recently set up a payment plan for \$200 per month, but she has not provided proof of any payments. She incurred a debt of \$6,598 when she was in the Army, and this debt is still unresolved. A credit card debt in the amount of \$1,789 is unresolved. A debt to the IRS for back taxes in the amount of \$6,480 is unresolved. A collection account for child care services in the amount of \$2,935 is the subject of a payment plan, and Applicant made two payments in September 2011 for a total of \$404. She did not present any evidence that she sought any form of financial counseling.

The Judge reached the following conclusions: Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy her obligations. Although some debts have been paid, Applicant still owes many of her debts, including the larger balance accounts. Applicant experienced a brief period of unemployment and was not receiving child support for two children for a considerable amount of time. These are conditions beyond her control. However, in order for this to be mitigated fully, Applicant must also act reasonably under the circumstances. Applicant failed to show that her actions were reasonable since the larger debts remain unpaid and it appears she has discretionary income to pay these debts. She produced no evidence of receiving financial counseling. Although several debts are paid and she has made installment payments on several more debts, the remaining debts remain unsettled and unresolved, including her tax debt and student loan debt. Therefore, her finances are not being resolved and are not under control. Her preliminary attempts to reach settlements with the IRS and her student loan creditor at this late date are

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<sup>1</sup> All the allegations under Guideline E and some of the allegations under Guideline F were withdrawn by Department Counsel and resulted in favorable formal findings by the Judge. No favorable findings are at issue in this appeal.

insufficient to support a finding that she has made a good-faith effort to pay or otherwise resolve her remaining debts. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

Applicant asserts that the Judge made errors in his findings of fact. She argues that the Judge's finding that Applicant claimed that a debt for \$207 (SOR allegation 1.g) no longer appeared on her credit report was not supported by the hearing transcript. After a review of the record, the Board concludes that the Judge's finding is directly supported by Applicant's testimony.<sup>2</sup> Applicant states that the Judge erroneously found that there was no evidence of financial counseling. A review of the record reveals no such evidence, and there is evidence to the contrary contained in the report of investigation included in a set of interrogatories submitted to Applicant.<sup>3</sup>

Applicant argues variously that: (a) the Judge failed to consider her history of having a security clearance; (b) the Judge erroneously concluded that Applicant's finances are not under control; (c) the Judge failed to fully consider and minimized the impact of her single parenthood and her dealings with the "deadbeat" fathers of her children; (d) there is a question as to the accuracy of the credit reports in evidence; and (e) the Judge failed to consider the fact that the Government withdrew allegations concerning her personal conduct. Applicant has failed 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 this presumption. Also, although Applicant's favorable history as a holder of a security clearance is a matter that the Judge may consider, and is a matter that can be a component of a whole-person analysis, there is no requirement for a judge to address that history in the adjudication of the issues raised in the SOR. The Judge explicitly discussed in his Decision the fact that the Government withdrew allegations concerning Applicant's personal conduct. Furthermore, Applicant has not articulated how this matter is relevant to addressing the Government's concerns about her financial history.

Applicant questions the accuracy of the credit reports admitted into evidence and questions the Judge's reliance upon them. Her argument fails inasmuch as she does not provide any specificity as to the errors she is claiming.

Applicant argues that the Judge erred in concluding that her finances are not under control, and asserts that the Judge did not give enough weight to the mitigating evidence of her status as a single mother who only recently began receiving child support payments from her children's fathers. 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

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<sup>2</sup>Tr. pp. 56-57.

<sup>3</sup>Govt. Exhibit 2.

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). In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He adequately discussed why, notwithstanding the presence of evidence in mitigation, the disqualifying conduct established under Guideline F ultimately remained a security concern. The Judge concluded that Applicant still owes a significant number of her larger debts such that her financial situation remained unresolved and there was no solid prospect for a resolution of the situation. This conclusion is reasonably supported by the record evidence.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

### **Order**

The decision of the Judge denying Applicant a security clearance 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