

KEYWORD: Guideline F

DIGEST: The Board cannot consider new evidence on appeal. The Judge’s decision is sustainable based on the evidence in the record. Adverse decision affirmed.

CASE NO: 11-02253.a1

DATE: 05/14/2012

DATE: May 14, 2012

In Re: _____ ----- Applicant for Security Clearance))))))))))))	ISCR Case No. 11-02253
---	--	------------------------

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

John Mahoney, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 27, 2011, 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 February 10, 2012, after the hearing, Administrative Judge John Grattan Metz, Jr. 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 issues on appeal: whether there is a basis for reopening the record to allow consideration of evidence that was developed after the hearing. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings of fact: Applicant is 50 years old. Her delinquent debts consist of two education loan accounts totaling over \$20,000, 15 medical accounts totaling nearly \$7,000, seven telephone accounts totaling nearly \$1,300, two insurance accounts totaling nearly \$1,000, and state and federal income tax debt totaling over \$3,300. Applicant has been the victim of a series of very unfortunate events since 2001. In 2001 she fell at work and hurt her back. She had medical insurance that covered most of her expenses, including surgery in 2001. She returned to work in April 2003 but was in a lot of pain. She worked until December 2003, when the pain became too unbearable for her to continue her job. She has been unemployed ever since. She had a second surgery in 2004. In 2005, Applicant was in an automobile accident, which aggravated her bad back. Her medical bills were covered by the other driver's insurance.

In 2004, Applicant's father fell ill and she traveled to see him, using borrowed money. In 2007, Applicant's brother was beaten into a coma. Applicant borrowed money to go see him in the hospital, and when he died in February 2008, she borrowed money to bury him.

Applicant received \$2,000 per month in disability insurance payments from March 2004 through September 2011. In September 2011 she received a \$28,000 lump-sum payment from the Social Security Administration (SSA) for back disability payments. Applicant was rated 100% disabled, effective July 2006. She is now eligible for Medicare, which will reduce her prescription costs and may help with delinquent medical bills dating back to January 2009. SSA is currently paying Applicant \$500 per month.

In November 2004, Applicant founded her own company, however the company currently exists only on paper. There is the prospect of contract work for the company if she can obtain her clearance. She claims, without corroboration, to have a funding source that will give her a \$10,000,000 line of credit for her business startup costs once she has her clearance. Applicant claims to have made arrangements with most of her creditors. While she provided some proof of payments made and accounts paid, most of her arrangements are uncorroborated. She cannot afford the monthly payments required to get a hardship deferment on her education loans. Applicant claimed she had financial counseling but provided no documentation. She did not submit a budget.

The Judge reached the following conclusions: The Government established a case for disqualification under Guideline F, and Applicant did not fully mitigate the security concerns. Her financial difficulties are both recent and multiple, and not apparently due to unusual circumstances not likely to recur. No reasonable person would conclude that the series of calamities that have befallen Applicant are not circumstances beyond her control, nor that she has acted irresponsibly in addressing her debts. While Applicant has taken little action to address her debts, she has had little means to do so. Nevertheless, Applicant has been under fairly severe financial pressure for ten years. Applicant has overcome many personal hardships to found her company and get it qualified for Government contracts. However, progress on her debts relies on too many contingencies. Assuming that she gets a line of credit for her startup costs, she still has to hire employees, pay them, get Government work, and get paid long enough to address her debts. The pendency of Government

contracts does nothing to show that she is gaining control over her finances or will be able to establish and meet payment arrangements for her delinquent debts. Unless she is able to find Government work that does not require a clearance, it is difficult to imagine how her debts can be resolved in the reasonably foreseeable future.

Applicant submits new matters not part of the record below and asserts that the Judge's findings of fact and conclusions of law are not supported by the new and material evidence provided on appeal. Applicant argues that the new evidence proves by preponderant evidence that numerous mitigating conditions apply, thereby rendering the Judge's decision erroneous. Applicant states that new and material evidence has come into existence since the Judge's February 10, 2012 decision, and that despite due diligence, this evidence was not reasonably available prior to that decision. Applicant argues that this state of affairs supports the Board reopening the record and reversing the Judge's decision.

The Board's authority to review cases is limited to instances where the appealing party has alleged harmful error on the part of the Judge, and it does not review cases *de novo*. Directive, ¶ E3.1.32. Although Applicant cites a federal court case involving another agency for the general proposition that an administrative proceeding can be reopened to consider new evidence, the Directive specifically prohibits the Board from receiving or considering new evidence on appeal. Directive, ¶ E3.1.29. There is no presumption of error below, and Applicant has not established harmful error on the part of the Judge based on the existing record. 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