

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Adverse decision affirmed.

CASENO: 11-09160.a1

DATE: 07/03/2013

DATE: July 3, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-09160
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 14, 2012, DoD 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). Applicant requested a hearing. On May 17, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark W. Harvey denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge made the following findings pertinent to the issue raised on appeal: Applicant has been employed by a Defense contractor since late 2011. She has an associate's degree and served in the military from 1998 to 2001. While she was in the military, authorities issued a warrant for her arrest for writing bad checks. She received "negative counseling" for that offense.¹ Decision at 2. Applicant received a general discharge from the military "because she was a single parent without a satisfactory family care plan." *Id.* Applicant experienced unemployment following her discharge. She and her husband moved to a different state, but he was unable to find work.

Applicant filed for Chapter 7 bankruptcy protection, and her debts were discharged in the early 2000s. The SOR alleged several delinquent debts that had not been resolved by the close of the record. These debts were for a mortgage, two repossessed vehicles, medical expenses, telecommunication services, etc. Applicant entered into a debt consolidation plan, through which she has initiated payments on some of her delinquent debts.

The Judge's Analysis

The Judge resolved allegations under Guideline E in Applicant's favor. He also entered favorable findings on most of the debts alleged under Guideline F. However, for nine of the alleged debts, he concluded that Applicant had failed to demonstrate mitigation. He stated that she had not provided documentation that shows she had taken reasonable action to resolve these debts or to show that she had attempted to communicate with creditors, negotiate settlements, etc. In the whole-person analysis, the Judge noted Applicant's military service and evidence that she had held a high-level security clearance without incident or concern. He also noted her evidence of unemployment and that she is an excellent worker. However, he noted her long history of financial problems, dating back to her years in the military and evidenced by her Chapter 7 bankruptcy. He concluded that the evidence she presented during the processing of her application and at her hearing was not sufficient to mitigate the security concerns raised by the nine debts discussed above.

Discussion

¹Applicant testified that she had a "writeup" for bad checks. Conceding guilt, she testified that someone got in touch with the military and advised them of the offense. She also stated that a warrant had been issued for her arrest because of these checks. Tr. at 29-31.

Applicant cites to evidence demonstrating that her circumstances have changed in recent years, for example that she makes more money than previously. She argues that the evidence shows that she has mitigated the security concerns in her case. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-06026 at 2 (App. Bd. Mar. 5, 2013). The Judge made extensive findings about Applicant’s financial history as well as about her good work record, her good security record, etc. His overall assessment of Applicant’s finances was that she had significant delinquent debt that she could not demonstrate she had attempted responsibly to resolve. This assessment is consistent with the record that was before the Judge. Applicant has not rebutted the presumption that the Judge considered all of the record evidence, nor has she demonstrated that the Judge mis-weighed the evidence. Applicant cites to evidence not contained in the record, for example that she was placed on administrative leave following the Judge’s decision. We cannot consider new evidence on appeal. *See, e.g.*, ISCR Case No. 11-08981 at 2 (App. Bd. Apr. 11, 2013). In any event, the adverse impact of an unfavorable decision is not relevant in evaluating an applicant’s security-eligibility. *See, e.g.*, ISCR Case No. 06-23613 at 4 (App. Bd. Feb. 4, 2013). Applicant argues that her bankruptcy action should not have been raised as a security concern. However, the Judge resolved an SOR allegation referencing the bankruptcy in Applicant’s favor. That she acquired additional debts after her discharge was a proper matter for the Judge to have considered, even if he concluded that the discharge itself was of limited concern.

We have considered the arguments Applicant put forth in her brief. In light of the record as a whole, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is AFFIRMED.

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, 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