

KEYWORD: Guideline F; Guideline E

DIGEST: Applicant claimed that after the hearing, the Judge and Department Counsel informed him that he should file Chapter 7 bankruptcy. On this record, the Board concludes that Applicant was not prejudiced by the colloquy since, as late as his appeal brief, he states that he “will be filing” bankruptcy. The case outcome was not affected by any dialogue between Applicant, the Judge or the Department Counsel regarding a prospective bankruptcy. Adverse decision affirmed.

CASENO: 11-10499.a1

DATE: 08/21/2013

DATE: August 21, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-10499
)	
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 19, 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 June 13, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene Lokey Anderson denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.¹

Applicant raises the following issues on appeal: whether the Judge and Department Counsel told Applicant to file a bankruptcy petition and whether the Judge's decision should be reversed. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant has approximately \$43,000 in delinquent debts to seventy two creditors. Most of his delinquent debts are medical bills.

Applicant has a history of criminal conduct including spousal abuse, three DUI arrests and an arrest for Possession of a Controlled Substance. He has also been cited and fined for speeding on at least thirteen occasions. In May 2011, Applicant prepared a security clearance application (SCA) in which he provided false answers to two questions.

The Judge concluded that Applicant's false answers were not deliberate but that Applicant's criminal history was extensive and not mitigated. The Judge also concluded that Applicant's financial history was disqualifying and not mitigated. The Judge's whole person analysis was consistent with her analysis under the individual guidelines.

Applicant claims that after the hearing the Judge and Department Counsel "both informed that I should file Chapter 7 bankruptcy." He goes on to say he will be filing Chapter 7 bankruptcy. Applicant's assertions in this regard go beyond the record evidence and the Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. In this case, there is discussion on the record by the Judge and (to a lesser extent) Department Counsel regarding the possibility of Applicant filing for bankruptcy, perhaps after being denied a clearance in the current adjudication but prior to a reapplication. Tr. at 91-97. That discussion could arguably be interpreted as advising the Applicant. The Board has previously noted that "[g]iving advice to Applicant on what to do to qualify for a security clearance would be inconsistent with the Board's obligation to conduct itself in a fair and impartial manner," and "the Board cannot and will not advise Applicant about what action or actions he can or should take." *See* ISCR Case No. 03-01578 at 4 (App. Bd. May 27, 2004). However, the Board has also noted "that it does not have supervisory jurisdiction or authority over the conduct of Department Counsel or Hearing Office Administrative Judges." *See* ISCR Case No. 02-04344 at 3 (App. Bd. Sep 15, 2003). On this record, the Board concludes that Applicant was not prejudiced by the colloquy since, as late as his appeal brief, he states that he "will be filing" bankruptcy. The case outcome was not affected by any dialogue between Applicant, the Judge or the Department Counsel regarding a prospective bankruptcy.

Applicant states that he would like the Judge's decision to be reversed because he is good, hard working and not a security risk. As the trier of fact, the Judge has to weigh the evidence as a

¹The Judge made formal findings favorable to the Applicant on some allegations brought forth under both Guideline F and Guideline E. Those favorable findings are not challenged on appeal.

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 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).

After reviewing the record, the Board concludes 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 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 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board