

KEYWORD: Guideline F

DIGEST: The Judge explicitly discussed the mitigating evidence which applicant asserts was not considered. Adverse decision affirmed.

CASENO: 11-10695.a1

DATE: 01/24/2014

DATE: January 24, 2014

In Re:)
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 -----) ISCR Case No. 11-10695
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)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Richard L. Morris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 12, 2012, DoD 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 October 15, 2013, after the hearing, Defense Office of Hearings and Appeals Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge considered all the evidence; whether the Judge properly applied the mitigating conditions; and whether the Judge’s whole person analysis is sufficient. For the reasons set forth below, the Board affirms the Judge’s adverse security clearance decision.

The Judge noted that Applicant, a mother of three, admitted to incurring \$8,000 of delinquent debt cited in the SOR, while denying the remaining \$5000 of alleged delinquent debt. The Judge also discussed her military service, her contentions that her ex-husband, a drug addict, was responsible for much of her debt, her successful challenges to some debts, and the lack of corroboration for her explanations of other debts.

The Judge discussed the mitigating conditions and concluded that three of them applied in part or in full. The Judge discussed the mitigating evidence and found for Applicant on several of the debts alleged in the SOR. However, the Judge concluded that the lack of documentation in support of some of her claims of debt payment or debt dispute resolution was too significant given the number of debts “with statuses that are unverified or unresolved.” Decision at 7.

A judge is presumed to have considered all the evidence unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). In this case, the Judge explicitly discussed the evidence which applicant asserts was not considered. Therefore, Applicant has not demonstrated error.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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*. 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. 12-11097 at 2 (App. Bd. Jun. 20, 2013). In this case the Judge discussed and applied three mitigating conditions in part or in full. He articulated a rational reason to conclude that Applicant had not mitigated the entirety of the government’s security concerns. The Judge’s rationale is sustainable on this record. Although the whole person analysis was brief, Applicant has not demonstrated that it was erroneous.

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He reasonably explained why the mitigating evidence was insufficient to overcome the government’s security concerns. 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. Accordingly, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his decision. "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 unfavorable security clearance decision under 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board