

KEYWORD: Guideline F

DIGEST: The Judge based her decision, in large measure, on the circumstances underlying Applicant’s delinquent mortgage debts and the dilatory nature of her action in regard to those debts. Applicant has not demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 11-10813.a1.

DATE: 12/06/2013

DATE: December 6, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-10813
)	
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 January 10, 2013, 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).¹ Applicant requested a hearing. On September 10, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's findings of fact contained errors; whether the Judge erred in her application of the mitigating conditions; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is employed by a Government contractor. She is seeking a security clearance for the first time. Her husband is a retired military officer who has worked for a Government contractor, earning about \$285,000. He was laid off from his employment due to a reduction in force, after he was diagnosed with a serious illness. He is currently unemployed.

In 2001, Applicant and her husband bought a house for about \$600,000, financing the purchase with two mortgages. Their monthly payments were \$5,600. In 2006, the couple found a new home that they wished to buy, but they could not afford to pay mortgages on two properties. They put their then-current house on the market, but it did not sell. They bought and took possession of the second property despite having failed to sell the first. They paid a three-month advance on the mortgages on their first house, after which they made no further payments. The lenders did not contact Applicant concerning the delinquencies owed on the first home, which was eventually sold through a foreclosure action. The SOR alleged delinquencies on both mortgages, in the amounts of \$25,818 and \$15,586 respectively.

Although Applicant and her husband attempted to contact the lenders, they did not search land records or inquire whether the house had been sold. Later, during a clearance investigation of his own, Applicant's husband made a verbal inquiry about any debts they might owe. Later, during her own clearance interview, Applicant stated that she would contact one of the creditors and pay any debt she owed, although she later acknowledged that she did not follow up on that promise by writing to the creditor. On July 9, 2013, after researching land records, Applicant wrote to the creditors holding the two delinquent debts and requested information.

Applicant and her husband have a combined net monthly income of \$8,548, with expenses totaling \$7,936. Applicant's assets include real estate (\$745,000); bank savings (\$1,200); joint savings (\$2,424); and eight vehicles (\$202,175). Applicant's husband sold two motorcycles and a bike trailer for \$8,000. Applicant advised her clearance interviewer that she had not had financial credit counseling.

The Judge's Analysis

¹The record also contains an earlier SOR, dated December 11, 2012, included as Government Exhibit (GE) 1. This SOR is identical in content to the SOR subsequently issued on January 10, 2013.

The Judge concluded that Applicant's financial circumstances raised concerns under Guideline F. In evaluating Applicant's case for mitigation, the Judge cited to evidence that the delinquent debts were, as of the close of the record, ongoing. She also stated that Applicant's security-significant conduct occurred before her husband's illness and job loss. Applicant and her husband undertook more mortgage debt that they could reasonably have afforded, which was a circumstance within their control. She noted that, while Applicant and her husband had made intermittent queries to their creditors, they had not attempted to work out repayment plans. She noted that Applicant's search of relevant land records, and submission of letters to her creditors, occurred during a hiatus in her clearance hearing.² The Judge characterized this activity as being untimely, doing little to demonstrate a good-faith effort to resolve debts. In the whole-person analysis, the Judge stated that Applicant had sufficient assets to establish and follow a payment plan.

Discussion

Applicant challenges some of the Judge's findings, for example that this was her first application for a security clearance and that she had not had financial counseling. We examine a Judge's findings to determine if they are supported by substantial record evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012). The first of these two findings is drawn from Applicant's answer to Section 25 of her clearance application (GE 2), the second from her clearance interview, included in GE 4, Answers to Interrogatories. Even if the Judge's findings contained errors, they did not likely affect the outcome of the case. The Judge's material findings of security concern are based upon substantial record evidence.

In challenging the Judge's treatment of the mitigating conditions, Applicant states the following: "I still don't understand what the court expects of an applicant when the creditor does not respond back. We have executed everything even that was asked and/or suggested by [the Judge] and Government Attorney." Appeal Brief at 2. We have examined the Judge's questions and comments during the course of the hearings, as well as those of Department Counsel. The Judge asked a number of questions in an attempt to clarify the evidence concerning Applicant's efforts at debt resolution. We find nothing in the Judge's questioning, or in the presentation made by Department Counsel, that would lead a reasonable person to believe that the submission of a certain quantum of evidence would result in the granting of a clearance, to the extent that Applicant's comment might imply that she had such an expectation. It goes without saying that a Judge cannot promise a favorable clearance decision, especially when he or she has yet to review all of the evidence that may be presented. *See, e.g.*, ISCR Case No. 09-06602 at 2 (App. Bd. Jan. 28, 2011). Applicant's comment might be interpreted as a challenge to the Judge's impartiality, although again we find nothing in the record that would persuade a reasonable person to believe that she was biased against Applicant. *See, e.g.*, ISCR Case No. 09-07395 at 3 (App. Bd. Sep. 14, 2010).

²The hearing was originally scheduled for July 1, 2013. The Judge continued the hearing until July 8, 2013, in order to ensure that the record contained the correct SOR and Applicant's reply thereto. Tr., Vol. 1, at 21. After reconvening on July 8 and taking evidence and testimony, the Judge continued the hearing a second time, because Applicant had not received copies of the Government's evidence prior to the hearing. Tr., Vol. 2, at 105, *et seq.* The hearing reconvened on July 17, 2013.

We have examined Applicant's challenge to the Judge's application of the mitigating conditions. The Judge based her decision, in large measure, on the circumstances underlying Applicant's delinquent mortgage debts and the dilatory nature of her action in regard to those debts. *See, e.g.*, ISCR Case No. 10-06975 at 2 (App. Bd. Apr. 19, 2012) (Even though the applicant's debts had been discharged through bankruptcy, the Judge properly considered the underlying circumstances of those debts in evaluating the applicant's security worthiness). The Judge's comment about the recency of Applicant's written communications with her creditors was consistent with the record evidence. Applicant asserts that she is financially stable and that the vast majority of those debts listed in her credit report are not delinquent. However, her argument consists essentially of a disagreement with the Judge's weighing of the evidence. Applicant has not demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 11-08063 at 3 (App. Bd. Jul. 19, 2013). In support of her appeal, Applicant has submitted evidence not contained in the record, which we cannot consider. Directive ¶ E3.1.29. Applicant has requested additional time in which to demonstrate that she has mitigated the security concerns in her case. However, we have no authority to grant such a request. *See, e.g.*, ISCR Case No. 10-00983 at 1-2 (App. Bd. May 17, 2011).

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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board