

KEYWORD: Guideline F

DIGEST: Applicant contends that the record evidence is dated. It is an applicant's responsibility to present evidence in rebuttal, explanation, extenuation, or mitigation. If Applicant believed that the evidence contained in the FORM was incomplete, it was her responsibility to supplement it. Adverse decision affirmed.

CASENO: 12-01325.a1

DATE: 12/11/2015

DATE: December 11, 2015

_____)
In Re:)
)
-----)

) ISCR Case No. 12-01325
)
)
)

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 July 28, 2014, DoD issued a statement of reasons (SOR)¹ 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 decision on the written record. On September 30, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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. Consistent with the following, we affirm.

The Judge’s Finding of Fact

Applicant is separated from her husband. She is a high school graduate. She enjoys an excellent reputation for the quality of her work performance, her adherence to security policies, and her handling of classified information.

Applicant experienced a period of unemployment in 2003, due to her having been laid off from a job. At the time of this job loss, she was married to a previous husband, whom she described as “a spendthrift ‘drunk’” who stole from her and pawned many of her personal belongings. Decision at 2. Two years later she filed for Chapter 7 bankruptcy protection, resulting in the discharge of approximately \$74,000 of debt. After divorcing her previous husband, Applicant got a job that paid only half of what she had made before. She moved in with a roommate in order to conserve money, but this person turned out to be “a scofflaw who opened credit cards in her name and ‘pawned everything [she] didn’t have locked down.’” *Id.*

Applicant’s delinquent debts include an auto loan in the amount of nearly \$12,000. Applicant had become unable to make her car payments, so she sought a voluntary repossession. The record does not state whether or not this actually occurred. The creditor charged off this debt. Applicant’s debts also include credit card accounts totaling about \$3,600. She claims that these accounts were opened by her roommate, one of which she paid and another was removed from her credit report. She provided no documentary evidence in support of these claims.

The Judge’s Analysis

¹The SOR has a different case number from the one on the Decision. The Judge stated that the case number listed on the SOR is incorrect and that the correct number is the one presented on the Decision. Decision at 1, note 1. We have used the number on the Judge’s Decision.

The Judge noted Applicant's unemployment, as well as her problems with her ex-husband and her roommate, which he characterized as circumstances that were beyond her control.² He stated, however, that Applicant had provided no evidence that showed responsible action in regard to her debts or that documented the basis for her dispute of the credit card accounts.³ She provided no information as to anything she had done to address her financial problems. In the whole-person analysis, the Judge reiterated his findings about the circumstances underlying Applicant's financial problems, concluding that she had not provided evidence of reasonable steps to resolve them.

Discussion

Applicant's brief cites to evidence not contained in the record, including as attachments a number of documents that post-date the Judge's decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends that the record evidence is dated and that the Judge's analysis did not take into account the true state of her finances. However, it is an applicant's responsibility to present evidence in rebuttal, explanation, extenuation, or mitigation. Directive ¶ E3.1.15. Applicant presented evidence in response to the File of Relevant Material (FORM). If she believed that the evidence contained in the FORM was incomplete, it was her responsibility to provide it.

The record shows that Applicant received notice sufficient to apprise a reasonable person of her rights and responsibilities regarding the presentation of evidence as well as of the burden of persuasion. *See*, for example, FORM at 2, containing Department Counsel's notice to Applicant of her right to submit a documentary response. Applicant had received similar notice in an earlier letter from DOHA, along with a copy of the Directive. To the extent that Applicant is contending that the Judge should have obtained a more recent credit report, a Judge has no authority to conduct further investigation into an applicant's case. To do so would conflict with his or her responsibility to serve as an impartial fact-finder. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015).

Applicant's brief cites to record evidence of the difficulties Applicant encountered with her ex-husband and her roommate. She also cites to her efforts at debt resolution. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Applicant states that if she does not receive a favorable decision she will lose her job. The Directive does not permit us to consider the impact of an adverse decision. *See* ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013).

²*See* Directive, Enclosure 2 ¶ 20(b): "the conditions that resulted in the financial problem were largely beyond the persons's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances[.]"

³*See* Directive, Enclosure 2 ¶ 20(e): "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue[.]"

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. The Judge's conclusion that Applicant did not submit sufficient evidence to meet her burden of persuasion as to mitigation is consistent with the record that was before him. *See, e.g.*, ISCR Case No. 14-00321 at 3 (App. Bd. Jun. 5, 2015) (Judge's adverse decision was supported by the extent of the applicant's debts and by a paucity of evidence in mitigation). Failure to meet financial obligations "may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Directive, Enclosure 2 ¶ 18.

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: Michael Ra'anan

Michael 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