

KEYWORD: Guideline F

DIGEST: Given Applicant's inconsistent statements, it was not unreasonable for the Judge to expect Applicant to provide corroboration to support her other claims. He apparently did not find her uncorroborated assertions sufficiently credible to establish those claims, and we are required to give deference to a Judge's credibility determinations. Adverse decision affirmed.

CASENO: 17-04166.a1

DATE: 03/21/2019

DATE: March 21, 2019

In Re: _____)
-----) ISCR Case No. 17-04166
)
Applicant for Security Clearance)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 23, 2018, 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 decision on the written record. On December 20, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 Findings of Fact

Applicant, who is 45 years old, has worked for a Federal contractor since 2016. She was unemployed from 2006 to 2008 and 2009 to 2013. She has been married twice and has five children.

The SOR alleged Applicant had 12 delinquent accounts totaling about \$14,400. These debts are established by credit reports. The Judge found for Applicant on nine medical debts that she disputed because she had insurance that should have paid them. The Judge found against Applicant on three remaining credit card debts. Applicant claimed her husband opened the three accounts without her permission and, because of her religion and culture, she had no right to question his handling of the finances. In a background interview, she acknowledged that she was a cosigner on the accounts. Two of the largest delinquencies were opened before her marriage to her current husband. She claimed she has separated from him and made efforts to remove the accounts from her name. She provided no documentation supporting her claim. These accounts remain unresolved. Character reference letters describe her as loyal, honest, professional, and patriotic.

The Judge's Analysis

Applicant debts are recent and unresolved. She failed to show her financial problems are unlikely to recur. She addressed her medical debts, but failed to document her dispute of the credit debt.

Discussion

Applicant argues that her husband opened accounts without her knowledge. She further contends the Judge erroneously found that she failed to substantiate that she had separated from her husband. With regard to these contentions, the Judge found:

Applicant denied [the credit card] debts because she claimed that they all were opened by her husband using her credit information, social security number, and other personal identifying information without her permission. She stated that

because of her religion and culture, she had no right to question her husband's handling of their finances or use of the credit cards. She acknowledged during her background interview that she was a cosigner on the accounts. Credit reports also show that the two largest credit cards delinquencies were opened before her marriage to her current husband. She claims that she is separated from her husband and has made efforts to contact the creditors to remove the accounts from her name. She failed to provide documentation supporting these assertions.¹

From our review of the record, substantial evidence supports the Judges's findings that Applicant acknowledged during a background interview that she was a cosigner on the two largest credit card debts and those accounts were opened before her current marriage.² File of Relevant Material (FORM) Items 3, 4, and 6. One of her credit reports also lists the third credit card debt as an "individual account." FORM Item 6. Regarding her contention that the Judge did not accept her assertion that she had separated from her current husband, we note the contradiction in the evidence between her statements that her husband opened credit card accounts without her knowledge or permission and her acknowledgment in a background interview that she cosigned those accounts. Response to FORM and FORM Item 4. In a DOHA proceeding, the applicant bears the burden of persuasion that he or she should have access to classified information, and corroborating evidence can go a long way toward enabling an applicant to meet that burden. Given her above-noted inconsistent statements, it was not unreasonable for the Judge to expect Applicant to provide corroboration to support her other claims. He apparently did not find her uncorroborated assertions sufficiently credible to establish those claims, and we are required to give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. Furthermore, a Judge is not required to give conclusive weight to any kind of evidence, even if it is un-rebutted. *See, e.g.*, ISCR Case No. 17-02588 at 5 (App. Bd. Mar. 5, 2019). Applicant has not established that the Judge committed harmful error in his findings or conclusions.

Applicant contends that the Judge did not consider all of the record evidence, mis-weighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. For example, she argues that she accumulated the debt due to periods of unemployment and that she acted responsibly in addressing her debts. Her arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-03978 at 3-4 (App. Bd. Mar. 6, 2019). We give due consideration to the Hearing Office case that Applicant has cited in support of her arguments, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.*

¹ Decision at 3.

² Substantial evidence 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, e.g.*, ISCR Case No. 16-01329 at 2 (App. Bd. Apr 11, 2018). We are unable to find that Applicant acknowledged in a background interview that she was a cosigner for the smallest of the three delinquent credit card debts, but that apparent error was harmless because it likely did not affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

The Judge examined the relevant evidence 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, App. A ¶ 2(b): “Any doubt 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: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Appeal Board