

KEYWORD: Guideline F

DIGEST: Applicant argues the background investigator concluded she was not a threat. In support of her argument, she quotes a sentence from the summary of her background investigation that states, “There is nothing in the subject’s background or lifestyle that could be used against her as potential coercion, pressure, duress or blackmail.” However, that sentence summarizes Applicant’s responses to the interviewer’s questions. It does not constitute the interviewer’s considered opinion as to Applicant’s worthiness for a clearance. Adverse decision affirmed.

CASENO: 17-03548.a1

DATE: 05/23/2019

DATE: May 23, 2019

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 December 22, 2017, 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 March 15, 2019, after the hearing, Administrative Judge Arthur E. Marshall, Jr., 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: (1) whether the Judge erred in his findings of fact and conclusions and (2) whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

The SOR alleged that Applicant had 15 delinquent debts. Applicant rectified an alleged mortgage debt, which the Judge found in her favor. The remaining debts total about \$89,000. Her husband was unemployed for over a year in 2011-2012 and for about five months in 2018. While he pays for their child's private school tuition, maintaining their family of three primarily on her annual salary of about \$135,000 has been "very hard." Decision at 2, *citing* Tr. at 25. She recently started a part-time job to supplement her income.

In September 2018, Applicant filed Chapter 13 bankruptcy. At that time of the hearing, her proposed Chapter 13 plan was pending approval. The bankruptcy paperwork also reflected that she had a negative net monthly remainder. In her post-hearing submission, Applicant submitted documentation of two payments to the bankruptcy trustee, but it was unclear whether the proposed payment plan had been formally implemented by the bankruptcy court.

Applicant has multiple delinquent debts, some dating back a decade. The lack of financial contributions from her husband is sufficient to raise Mitigating Condition 20(b).¹ About \$89,000 of debt is included in the Chapter 13 bankruptcy for which she has not established a record of consistent and meaningful payments.

Discussion

Applicant's appeal brief includes information not contained in the record, including some documents that post-date the Judge's decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

¹ Directive, Encl. 2, App. A ¶ 20(b) states, "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances[.]"

In her brief, Applicant challenges a number of the Judge's findings and conclusions. In making those arguments, Applicant relies extensively on new evidence that, as noted above, we cannot consider. From our review of the record, the Judge's material findings and conclusion are based on substantial evidence or constitute reasonable inference or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant argues the background investigator concluded she was not a threat. In support of her argument, she quotes a sentence from the summary of her background investigation that states, "There is nothing in the subject's background or lifestyle that could be used against her as potential coercion, pressure, duress or blackmail." Applicant's Exhibit O. However, that sentence summarizes Applicant's responses to the interviewer's questions. It does not constitute the interviewer's considered opinion as to Applicant's worthiness for a clearance. *See, e.g.*, ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 30, 2015). In any event, even if an investigator provided such an opinion, it would not bind the DoD in its evaluation of an applicant's case.

The balance of Applicant's argument amount to a disagreement with the Judge's weighing of the evidence. As we stated in the past, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. The Judge, as the trier of fact, 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has not established that the Judge committed any harmful error. 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility 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