

KEYWORD: Guideline F

DIGEST: Applicant also contends the Judge incorrectly analyzed the evidence. She argues the Judge concluded “the record fails to establish that her debts are being resolved or under control . . . [and] does not show a good-faith effort by Applicant to repay overdue creditors” despite evidence that she has “more than a two-year track record of regular payments.” The above quotes, however, are unrelated. By contrasting them, Applicant has taken them out of their context. The Judge’s quote pertaining to the “two-year track record of regular payments” addressed Applicant’s effort to resolve the car loan. The Judge found in favor of Applicant on the car loan. The other quote pertaining to Applicant’s failure to establish that the “debts are being resolved or are under control” addressed the other debts for which the Judge concluded insufficient corroborating documentation was presented. Applicant’s contention does not establish any error in the Judge’s analysis. Adverse decision affirmed.

CASENO: 17-00302.a1

DATE: 01/10/2019

DATE: January 10, 2019

In Re: _____)
-----) ISCR Case No. 17-00302
Applicant for Security Clearance)
_____)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Judd G. Millman, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 14, 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 October 24, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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 and Analysis

Applicant is a 53-year-old employee of a defense contractor. She has held a security clearance for about 28 years. The SOR alleged seven delinquent debts totaling about \$24,900. She primarily attributed the delinquent debts to a geographic move associated with a military base closure and to fluctuations in her earnings. She also experienced medical problems that resulted in hospitalizations.

Applicant negotiated a settlement of a delinquent car loan for a repossessed vehicle. Under that settlement, she made regular monthly payment of \$175 from early 2016 to mid 2018. However, she failed to present sufficient documentation to establish that she has resolved or is resolving the other delinquent debts. She acted responsibly towards the delinquent car loan, but not the other debts.

Discussion

Applicant's appeal brief contains documents and assertions that are not included in the record. In fact, some of those documents post-date the Judge's decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant contends the Judge incorrectly stated that she has worked for different contractors. She notes that she has worked for the same entity over the past 28 years, but it has changed names several times. We conclude, however, this error was a 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).

Applicant also contends the Judge incorrectly analyzed the evidence. She argues the Judge concluded "the record fails to establish that her debts are being resolved or under control . . . [and] does not show a good-faith effort by Applicant to repay overdue creditors" despite evidence that she has "more than a two-year track record of regular payments." Appeal Brief at 4, quoting from Decision at 7 and 8. The above quotes, however, are unrelated. By contrasting them, Applicant has taken them out of their context. The Judge's quote pertaining to the "two-year track record of

regular payments” addressed Applicant’s effort to resolve the car loan. The Judge found in favor of Applicant on the car loan. The other quote pertaining to Applicant’s failure to establish that the “debts are being resolved or are under control” addressed the other debts for which the Judge concluded insufficient corroborating documentation was presented. Applicant’s contention does not establish any error in the Judge’s analysis.

Applicant challenges the Judge’s conclusion that she took inconsistent positions regarding the debts that undermined her credibility and judgment. The Judge, for example, noted that Applicant testified that she entered into an agreement with the creditor to start making \$100 monthly payments on a delinquent vehicle lease in August 2018. Tr. at 35-38. In her post-hearing submissions between June and September 2018, Applicant presented no proof of the agreement or payments under it, but indicated that her attorney was trying to settle that debt. Decision at 8. From our review of the record, the Judge’s conclusion about Applicant taking inconsistent positions about the debts is based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant further argues “[t]he debts were not incurred as a result of the concerns outlined in Guideline F, such as ‘frivolous or irresponsible spending’ and it certainly does not represent ‘unexplained affluence.’” Appeal Brief at 5. The Judge, however, did not conclude that the disqualifying conditions pertaining to frivolous or irresponsible spending or unexplained affluence applied in this case. Instead, the Judge concluded that Disqualifying Conditions 19(a), *inability to satisfy debts*, and 19(c), *a history of not meeting financial obligations*, applied. His conclusions regarding the application of Disqualifying Conditions 19(a) and 19(c) were based on substantial evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3.

The balance of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence. Those arguments, however, are not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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 ¶ 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board