

KEYWORD: Guideline F

DIGEST: Applicant notes that the largest debt was reported by only one credit reporting agency on one credit report in the record. He argues that it was reported on that credit report through an error that has now been corrected. It is well settled, however, that adverse information from a credit report can normally meet the substantial evidence standard and the Government's obligations under Directive ¶ E3.1.14 for pertinent allegations. Adverse decision affirmed.

CASENO: 18-00096.al

DATE: 04/04/2019

DATE: April 4, 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 January 29, 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). Initially electing a decision on the written record, Applicant later requested a hearing. On January 23, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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, who is 60 years old, has been working for a Federal contractor since 2016. He experienced periods of unemployment and underemployment. His current annual salary is about \$120,000. The SOR alleged five delinquent debts. The Judge found in favor of Applicant on three of those debts and against him on the other two.

The largest debt that the Judge found against Applicant was for about \$46,900. Applicant did not disclose that debt on his 2017 security clearance application. In a background interview, he told an investigator that his failure to disclose the debt was an error, that he believed the debt was an equity loan on a former home disposed of through a short sale in 2014, and that he intended to reach a settlement with the creditor as soon as possible. In responding to the SOR, Applicant denied this debt and indicated he had no recollection of it. He also noted the debt no longer appears on his credit report and his preliminary investigation showed the debt to be at least ten years old. He asserted there was no legal advantage in disputing the debt because it was beyond the statute of limitations. At the hearing, he stated the debt did not belong to him, indicated he was not going to dispute a ten-year-old debt, and admitted he worried about resetting the statute of limitations. He pursued the short sale of the home because he had trouble making the mortgage payments and was living off of credit cards. He stated that, based on the amount of the debt, he believed it was likely the equity loan.

The other debt that the Judge found against Applicant was for \$88. Applicant claimed he had no recollection of this debt. He decided not to pursue this debt because it is no longer listed on his credit report. He also stated that he has another account with this creditor who had no record of him having an unpaid account. The record also reflects that Applicant had six non-alleged debts totaling over \$29,700 that creditors cancelled by issuing IRS Forms 1099-C.

"Applicant made numerous inconsistent statements in his government interview, answer to the SOR, and testimony. I did not find him credible." Decision at 6. There is insufficient evidence to conclude his financial problems are unlikely to recur. He has not acted responsibly regarding his debts. His conduct casts doubt on his reliability, trustworthiness, and good judgment.

Discussion

In his appeal brief, Applicant notes that the largest debt was reported by only one credit reporting agency on one credit report in the record. He argues that it was reported on that credit report through an error that has now been corrected.¹ It is well settled, however, that adverse information from a credit report can normally meet the substantial evidence standard and the Government's obligations under Directive ¶E3.1.14 for pertinent allegations. *See, e.g.*, ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). In this case, the Judge's adverse findings about the largest debt are not only supported by that credit report but also by some of Applicant's inconsistent statements in which he indicated the debt was likely a equity loan on his former home disposed of through a short sale. In this regard, we note that it is a Judge's task to resolve apparent conflicts in the evidence. *See, e.g.*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). Based on the record evidence, the Judge's decision to discount Applicant's denial of the debt was not unreasonable. Applicant has failed to establish that the Judge erred in her adverse findings regarding that debt.²

In his brief, Applicant also notes that he testified about having a checking account stolen from him. He contends the Judge incorrectly found that he did not file a police report for the stolen checks. The transcript supports his contention that he testified about filing a police report. Tr. at 28. He also challenges one of the Judge's findings about a debt in which she found in his favor. These errors, however, were harmless because they did not likely affect on the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

Applicant further contends that the Judge "went out of her way to discredit my integrity and credibility based on her feelings to support her case and unreasonably denied all the factual evidence." Appeal Brief at 2-3. To the extent that Applicant is contending the Judge was biased against him, we note there is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to rebut that presumption has a heavy burden of persuasion on appeal. *See, e.g.*, ISCR Case No. 12-01122 at 3 (App. Bd. Apr. 22, 2016). Applicant's appeal brief is not sufficient to rebut the presumption the Judge was impartial. Moreover, Directive ¶E3.1.32.1 provides that we shall give deference to a Judge's credibility determination. The balance of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence and are insufficient to establish that she 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).

¹ The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports for various reasons, including the passage of time. *See, e.g.*, ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019).

² Applicant has similarly challenged the Judge's adverse finding regarding the smaller debt. He argues that he was unsuccessful in contacting the collection agency and the original creditor does not have a record of the debt. These arguments are not enough to establish the Judge committed any harmful error in her findings or conclusion regarding that debt.

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 Y. Ra'anan

Michael Y. 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