

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 11, 2019, 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 December 11, 2019, after the hearing, Administrative Judge Michael H. Leonard 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 in the appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge summarized the case as follows:

Applicant experienced a business downturn and eventual business failure that concluded with selling the business in late 2011. The resulting financial problems included bankruptcy court proceedings, foreclosure of his personal residence, and tax problems with state and federal tax authorities. Pursuant to federal tax liens, he still owes the IRS about \$66,000 for a civil penalty for multiple tax periods. Although the conditions that resulted in his financial problems were largely beyond his control, his tax problems with the IRS have gone on for too many years to justify complete mitigation. Accordingly, this case is decided against Applicant. [Decision at 1.]

Applicant’s appeal brief contains documents and assertions that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

In his appeal brief, Applicant stated:

Having read the reasons for denial of a security clearance, I challenge the statements of “inability to live within one’s means” [*sic*], meet financial obligations may indicate poor self-control, lack of judgment or willingness [*sic*] to abide by rules and regulations” arising in questionable persons [*sic*] reliability, on the grounds of the evidence shown at the hearing, and the years of evidence in my financial history, as well as my character references by those whom were willing to stand up and recognize my judgment, self-control and trustworthiness. [Appeal Brief at 1.]

The language that Applicant is challenging is not a finding the Judge made regarding him. Rather, the challenged language is part of the Judge’s quote from the Concern Paragraph in Guideline F.¹ The Judge cited the Concern Paragraph to set the stage for his analysis of the facts in the case. To

¹ In the decision, the Concern Paragraph of Guideline F is quoted inaccurately with language from both the current version and the prior 2006 version.

the extent Applicant may be arguing that the SOR does not allege security concerns, we note the Directive presumes there is a nexus or rational connection between proven circumstances under any of its guidelines and an applicant's security eligibility. Direct or objective evidence of nexus is not required. *See, e.g.*, ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018). This challenge does not establish any error.

Applicant's brief is essentially a recitation of the facts surrounding his financial problems and amounts to a challenge to the Judge's weighing of the evidence. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor sufficient 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. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017).

Applicant failed to establish that the Judge committed any harmful error. The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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* at 528. *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 E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board