

Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 10, 2020, after considering the record, Administrative Judge Eric H. Borgstrom 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 in her 50s, works for a defense contractor. She is married and has two adult children. The SOR alleged that she has four delinquent debts, which consist of three student loans and a credit card account. In responding to the SOR, Applicant admitted the three student loans and disputed the credit card account.

Applicant cosigned the three student loans so that her eldest child could attend college between 2006 and 2012. In 2013 and 2014, the three student loans, totaling about \$66,000, were placed for collection. In a background interview, she indicated her eldest child was responsible for repayment of those student loans, noted she received no communications from the creditor, and stated she had no intent to take further action regarding them. She was taking action to resolve other non-alleged student loans. Applicant's credit report reflects she had a credit card account that was placed for collection for over \$900. She initially denied owing this account and suggested it may be a fraudulent or incorrect entry on her credit report. She later indicated she contacted the creditor and received a balance owed, but provided no further information about the charges on the account or documents showing efforts to resolve it.

Applicant attributed her financial problems to period of unemployment, underemployment, her health problems, and a serious injury her youngest son sustained in an automobile accident that requires significant medical care. Her budget reflects a net monthly remainder between \$600 and \$700, after deducting payments of over \$500 toward the alleged student loans and \$800 for entertainment and hobbies. She submitted no documentation showing payments were made to resolve the three alleged student loans. Her clients and coworkers praise her character and work performance. She experienced conditions beyond her control that contributed to her financial problems. However, she has refused to take responsibility for three student loans that she cosigned. At one point, she indicated that she would not repay those loans. She provided no documentation of her efforts to resolve them. "Notwithstanding the significant hardship and emotional toll surrounding her son's vehicle accident, Applicant has not demonstrated that she has acted in a financially-responsible manner to address and resolve the delinquent accounts alleged in the SOR." Decision at 6.

Discussion

In her appeal brief, Applicant states, “I did not have an in person interview, none of my references were contacted, and the government [contractors] I worked for . . . 23 months were never interviewed. I believe if that had been done, the result would have been favorable.” Appeal Brief at 1. Of note, she underwent a background interview with an investigator in November 2018. File of Relevant Material (FORM) Item 5. She is most likely referring to a hearing when she states she did not have an in-person interview.

When she received the SOR, Applicant was provided a copy of the Directive and a form that advised she could request a hearing or have her case decided on the written record. Applicant chose the latter option. Department Counsel later prepared the FORM that was mailed to Applicant in October 2019. The cover letter accompanying the FORM stated:

[Department Counsel] has been assigned to present the Government’s case and has prepared a [FORM] which will be submitted to an Administrative Judge to make the determination in your case. Before the FORM is sent to the Administrative Judge, you have an opportunity to review it, make any objections, and submit any additional material you like the Administrative Judge to consider. . . . If you do not file any objections or submit any additional information within 30 days of receipt of his letter, your case will be assigned to an Administrative Judge for a determination based **solely** upon the enclosed FORM. [Emphasis added.]

Neither the Judge nor Department Counsel have a duty to present mitigating evidence or to serve as an applicant’s investigator. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015). If Applicant wanted the Judge to consider additional matters, the burden was on her to present them. Directive ¶ E3.1.15. If she misunderstood the nature of her forum choice, the nature of the proceeding, or the responsibilities of the Judge or Department Counsel, the blame cannot fairly be placed on DOHA or other DoD officials. Applicant’s assertions fail to establish that she was denied the due process afforded her under the Directive. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017). On the other hand, if Applicant is contending that she was denied due process because her clearance interview was conducted telephonically, we have no authority to rule on how security officials conduct investigations. *See, e.g.*, ISCR Case No. 14-04186 at 3-4 (App. Bd. Oct. 28, 2015).

Applicant highlights facts supporting the whole-person factors and argues she should be granted a security clearance. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge 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 also points out that she is required to have a clearance to work in her job even though she has no access to classified information. Neither the impact of an adverse decision nor an individual’s access to classified material are relevant considerations in determining national security eligibility. *See, e.g.*,

ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013)(impact of an adverse decision) and ISCR Case No. 18-02728 at 2 (App. Bd. Nov. 12, 2019)(access to classified information).

Applicant has failed to establish the Judge committed any harmful errors. 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: James E. Moody
James E. Moody
Administrative Judge
Member, 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