

KEYWORD: Guideline F

DIGEST: DOHA letter of January 4, 2021. Applicant's decision to not consult with counsel was her choice. Her contention that she was underrepresented fails to establish that she was denied any due process rights afforded under the Directive. Adverse decision affirmed.

CASE NO: 20-01866.a1

DATE: 06/02/2021

DATE: June 2, 2021

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In Re:)	
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)	
-----)	ISCR Case No. 20-01866
)	
Applicant for Security Clearance)	
_____)	

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 October 29, 2020, 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 decision on the written record. On March 11, 2021, after considering the record, Administrative Judge Noreen A. Lynch denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had filed five Chapter 13 bankruptcies between 1989 and 2017 and that she had a debt placed for collection. Applicant admitted the SOR allegations with explanations. The Judge found against Applicant on the bankruptcy allegations and for her on the debt allegation. In her analysis, the Judge concluded that, although Applicant experienced some unemployment, she chose to gamble and file bankruptcy instead of making payments on her accounts, that she had shown a pattern of financial irresponsibility, and that she failed to present evidence sufficient to mitigate the alleged security concerns.

Applicant's appeal brief contains documents that are not in the record and postdate the Judge's decision. We are prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

In her appeal brief, Applicant notes that she did not consult with an attorney and contends that she was "underrepresented." Appeal Brief at 1. When Applicant received the SOR, she was provided a copy of the Directive that notified her of her right to be represented by counsel or a personal representative in this proceeding. Directive ¶¶ 4.3.4 and E3.1.8. The cover letter forwarding Department Counsel's File of Relevant Material also advised her that she had a "right to be represented by counsel at her own expense." DOHA letter of January 4, 2021. Applicant's decision to not consult with counsel was her choice. Her contention that she was underrepresented fails to establish that she was denied any due process rights afforded under the Directive.

Applicant next contends the Judge erred in finding her 2010 and 2011 bankruptcies were dismissed because she was financially irresponsible, noting she was unemployed during that period. We do not find any merit in this assertion. The Judge found that Applicant "stated in her Answer that unemployment was the reason for two bankruptcies in 2010 and 2011." Decision at 2. The Judge did not make a specific finding for the reason why Applicant's 2010 bankruptcy was dismissed but found that her 2011 bankruptcy was dismissed due to unemployment and subsequent inability to make bankruptcy plan payments. *Id.* at 2-3. In discussing these bankruptcies, the Judge also found, "[Applicant] acknowledged that she takes responsibility for not downsizing and changing her living habits as she should" after her income was reduced significantly when she medically retired from a state job she held for almost 20 years. *Id.* at 2. This latter finding was supported by statements Applicant made in her SOR response. Item 2 at 3.

To the extent that Applicant may be challenging the Judge's findings or conclusions that gambling had an impact on her financial situation, we do not find that contention convincing. In a 2012 background interview, Applicant reportedly stated that gambling led to some of her financial problems. Although she did not attribute any specific debt to her gambling, she indicated that conduct "became part of a pattern" she needed to stop. Item 7 at 10 and 11.

As a related matter, Applicant asserts the Judge's analysis of the two dismissed bankruptcies was based on an "implied bias." Appeal Brief at 1. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See, e. g.*, ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020). In her brief, Applicant has failed to identify any matter in the Judge's decision or in her processing of the case that would lead a reasonable, disinterested person to question her fairness or impartiality.

As best we can discern, Applicant contends the Judge erred in considering her first bankruptcy because it was filed over 32 years ago and she was young at that time. This argument is not persuasive. Each of Applicant's bankruptcy filings was relevant evidence for the Judge to consider in determining whether Disqualifying Condition 19(c), "a history of not meeting financial obligations[,]" was applicable. *See* Directive, Encl. 2, App. A ¶ 19(c). The Judge committed no error in concluding that disqualifying condition applied in this case.

In her arguments, Applicant further asserts that the Judge gave no consideration to the two bankruptcies she completed in 1995 and 2008, that she is a single individual with marginal income who is caring for an elderly parent, and that she is within months of becoming debt free, except for her student loans, upon completing her current Chapter 13 bankruptcy. None of her arguments are enough to rebut the presumption that the Judge considered all of the evidence in the record or 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. 18-02728 at 2 (App. Bd. Nov. 12, 2019). Applicant also notes she has not had access to classified information during the past year and a half in her current job. As the Board has stated in the past, we have no authority to consider the extent to which an applicant may or may not actually have access to classified information in the course of his or her employment. *Id.*

Applicant has failed to establish the Judge committed any harmful errors. Based on our review of the record, 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 E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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