

Date: May 12, 2022

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In the matter of:)	
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-----)	ISCR Case No. 20-02999
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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 April 7, 2021, 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 February 23, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant states that he understands how the Judge arrived at his conclusions. Indeed, he observes that, given the evidence in the record, the Judge could only have issued an adverse decision. We do not review cases *de novo* but must address only those issues of harmful error raised by the appealing party. Directive ¶ E3.1.32. If the appealing party has not raised issues of harmful error we affirm the Decision as it stands. *See, e.g.*, ISCR Case No. 19-02330 at 2 (App. Bd. Mar. 18, 2022). Viewing the brief as a whole, we find that Applicant has implicitly raised

such issues. Despite his apparent concession that the Judge's decision is understandable and supportable, we construe other aspects of Applicant's brief as raising a possible due process issue and as challenging some aspects of the Judge's analysis.

The SOR alleged 15 delinquent debts totaling about \$115,000. The Judge concluded that Applicant presented insufficient evidence to show that these debts had been resolved. Applicant states that he did not give his case for mitigation "the proper attention and focus that [he] should have." He states that he was not "counseled well" and that he mistakenly believed that the matters contained in the File of Relevant Material (FORM) would be sufficient to result in a favorable decision. Appeal Brief at 1.

Prior to closure of the record, Department Counsel, by means of the FORM, provided Applicant with all of the evidence that supported the SOR. In addition, she accompanied the evidence by a written presentation placing Applicant explicitly on notice that he had not provided documents showing a meaningful track record of financial recovery. Applicant received the FORM on September 2, 2021. It was accompanied by a cover letter that also advised him of his rights and obligations to submit a response to the SOR allegations and cited to relevant provisions of the Directive regarding DOHA's adjudication process. Applicant had previously received a copy of the Directive along with the SOR. After examining the record as a whole, we conclude that Applicant received adequate notice of his right to submit evidence. *See, e.g.*, ISCR Case No. 20-01217 at 3 (App. Bd. Jul. 19, 2021). If Applicant did not appreciate the gravity of his circumstances, it was not due to any defect in the guidance that DOHA provided him. Although *pro se* applicants are not expected to perform at the level of attorneys, they are required to take reasonable steps to protect their interests. *See, e.g.*, ISCR Case No. 17-03689 at 2 (App. Bd. Sep. 21, 2018). Applicant was not denied the due process rights afforded by the Directive.

Applicant makes arguments regarding the Judge's analysis of the mitigating conditions and the whole-person factors. Among other things, he contends that he did not wait until he had received the SOR to begin addressing his financial problems, as the Judge stated. He also notes that he has held a clearance for many years without incident or concern. We have considered Applicant's arguments in light of the record. Applicant's good prior security record does not undermine the Judge's decision. Even those with clean records can experience circumstances in which their eligibility for access to classified information could be brought into question. The Government does not have to wait until a person actually compromises classified information in order to issue an adverse determination. *See, e.g.*, ISCR Case No. 19-01949 at 2 (App. Bd. Apr. 14, 2021). Applicant's arguments viewed as a totality are not enough 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. 20-02818 at 5 (App. Bd. Apr. 20, 2022).

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 F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board