



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
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(703) 696-4759

Date: November 28, 2022

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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 19-00054 |
| |) | |
| Applicant for Security Clearance |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Daniel Conway, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 26, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 19, 2022, after considering the record, Administrative Judge John Bayard Glendon denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in finding against Applicant on the fraud allegations and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The SOR contains nine Guideline F allegations. These assert that Applicant received Chapter 7 bankruptcy discharges in 1991, 2010, and 2019; that she had Chapter 13 bankruptcies

dismissed in 2015 and 2016; that she was indebted to the United States for about \$14,000 in unpaid taxes; that she was indebted to a state for about \$8,400 in unpaid taxes; that she had a state tax lien entered against her for about \$7,600; and that she had a judgment of about \$14,700 entered against her for fraudulently obtaining unemployment benefits. The last allegation was cross-alleged under Guideline E. In responding to the SOR, Applicant denied the fraud allegation and admitted the other Guideline F allegations. The Judge found in favor of Applicant on the state tax allegations and against her on the others.

Applicant's appeal brief contains documents and assertions that were not presented to the Judge for consideration. Those documents and assertions constitute new evidence that the Appeal Board is prohibited from receiving or considering. Directive ¶ E3.1.29.

Applicant contends the cross-alleged fraud allegation lacks basis because she was unemployed during the period in question, which entitled her to unemployment benefits. During Applicant's 2015 Chapter 13 bankruptcy proceeding, a state agency filed a complaint against her challenging the dischargeability of a debt. File of Relevant Material (FORM) Item 6 at 3 (bankruptcy docket) and Item 12 (Complaint to Determine Dischargeability of a Debt). The complaint alleged that, while receiving unemployment benefits, Applicant made representations that she remained unemployed or underemployed and was entitled to receive those benefits when she knew those representations were false and made with the intent to deceive. FORM Item 12 at 3. The complaint identifies the name of Applicant's employer and the dates of her employment when she was receiving unemployment benefits. In response to this complaint, the Bankruptcy Court entered a judgment against Applicant in total amount of \$14,770, including interest and fees. FORM Item 11 at 1. Based on our review of the record, there is substantial evidence to support the Judge's adverse findings against Applicant on the cross-alleged fraud allegation.

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. However, none of her arguments are sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017).

Applicant failed to establish the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with 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 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: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board