

Date: December 21, 2022

In the matter of:)
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-----) ISCR Case No. 21-02369
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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 December 1, 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 Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On October 14, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) 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.

Applicant’s SOR lists 22 delinquent debts, for such things as credit cards, medical expenses, education debts, and an automobile loan. The Judge resolved seven allegations in Applicant’s favor and ten allegations adversely to Applicant, including the auto loan in the amount of about \$13,000 and a collection account of about \$7,000.¹

¹ Executive Order 10865 § 3(7) provides that an adverse decision shall make findings for or against an applicant on each SOR allegation. *See also* ISCR Case No. 18-00110 at 4 (App. Bd. Mar. 31, 2020), noting the Directive also

Applicant attributed her financial problems to a year during which she worked without pay and to her husband's unemployment. The Judge found that Applicant had supplied no information about her income and expenses and no evidence of financial counseling. Applicant did obtain the services of two debt resolution companies but stopped using them. The Judge found that most of Applicant's efforts at debt resolution occurred after receipt of the SOR.

In the Analysis portion of the Decision, the Judge noted circumstances beyond Applicant's control that affected her financial condition. However, she concluded that Applicant had not shown sufficient responsibility in resolving her debts to meet her burden of persuasion as to mitigation. The Judge also cited to a paucity of record evidence regarding Applicant's current income, a monthly budget, and financial counseling.

Applicant's brief includes information from outside the record, which we cannot consider (Directive ¶ E3.1.29), except for the following. Applicant has presented email traffic between her security manager and DOHA officials regarding her Response to the File of Relevant Information (FORM). She states that the DOHA official with whom she dealt did not mention having received her Response and that the Judge did not acknowledge receipt either. Although these assertions constitute new evidence, we will consider them insofar as they pertain to the threshold issue of due process. *See, e.g.*, ISCR Case No. 18-01764 at 1-2 (App. Bd. Jun. 4, 2019).

Applicant has attached to her brief email traffic and USPS tracking information. The record contains a document showing that Applicant received the FORM on May 11, 2022, and the USPS tracking information shows that Applicant's Response thereto was delivered to DOHA on June 13, 2022. In reply to a November 16, 2022, email query by Applicant a DOHA official stated that her FORM response had been received and passed on to the Judge. At the beginning of the Decision the Judge noted that Applicant had responded to the FORM, although she did not explicitly identify the submitted documents. Decision at 1. She did, however, state in her findings that Applicant's Response included three credit bureau reports, which is consistent with the record. Decision at 3. All in all, Applicant's appeal brief and attachments do not establish a *prima facie* case that Applicant submitted evidence that was not included in the record. We conclude that Applicant was not denied an opportunity to present evidence in mitigation.

Applicant cites to evidence regarding a settlement agreement she has with the auto loan creditor. The Judge resolved this debt adversely to Applicant, finding that payment under the agreement was not to begin until January 2023. Decision at 3. Actually, that is the date upon which payments are expected to end. Settlement Offer dated June 6, 2022, included in Response to FORM. Accordingly, this finding is in error. However, the agreement was finalized six months after the date of the SOR, which supports the Judge's finding about the timing of Applicant's efforts at debt resolution. Therefore, the error in question did not likely affect the overall outcome of the case and is, accordingly, harmless. *See, e.g.*, ISCR Case No. 18-02722 at 4 (App. Bd. Jan. 30, 2020).

requires the Judge to make formal findings on each allegation. In this case, the Judge's error in failing to make formal findings on five allegations, however, is harmless.

Applicant’s arguments on appeal are not 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. 18-02872 at 3 (App. Bd. Jan. 15, 2020). The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Applicant has cited to no harmful error in the Judge’s findings or analysis. 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: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board