

Date: May 17, 2023

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In the matter of:)	
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-----)	ISCR Case No. 22-00694
)	
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 July 5, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 21, 2023, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Candace Le’i Garcia concluded that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether he was denied due process and whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The SOR alleged that Applicant had 14 delinquent debts, including four student loans totaling about \$11,000, seven consumer debts totaling about \$6,500, a child support arrearage of about \$250, and two judgments totaling about \$17,700. The Judge found in favor of Applicant on the child support arrearage, noting he had been making payments on that debt for several months, and found against him on the remaining debts. In her analysis, the Judge found that Applicant indicated he paid the student loans and two other debts but did not provide documentation to corroborate those claims, that he did not provide any information about three other debts, and that he indicated that he did not feel obligated to resolve two older debts and intended to wait for them to fall off his credit report. After first citing Appeal Board decisions holding that it is reasonable for a judge to expect an applicant to present documentation showing resolution of specific debts and that merely waiting for debts to fall off a credit report is not favorable mitigating evidence of debt resolution, the Judge concluded that Applicant's debts continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Jurisdiction and Due Process

Citing to Directive ¶ 2.6, Applicant asserts that the Directive did not apply to him because he has access to sensitive compartmented information. Under the Directive ¶¶ 2.3 and 3.1, however, DOHA has jurisdiction over security clearance determinations that the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS)¹ forwards to it involving applicants who hold or require access to classified information in connection with their employment in the private sector. Applicant's adjudication falls under such authority. Said differently, DOHA has jurisdiction under the Directive to determine Applicant's security clearance eligibility.

Applicant's appeal brief essentially claims that he was denied due process. In general, he contends that he was not given adequate notice of the reasons for revoking his security clearance and was not given an adequate opportunity to respond to those reasons. More specifically, he claims he was not given an opportunity to respond to Department Counsel's File of Relevant Material (FORM). We do not find these arguments persuasive.

As noted above, the SOR was issued in July 2022. It adequately placed Applicant on notice of the reasons why the DoD Consolidated Adjudication Facility (now DCSA CAS) was unable to find that it was clearly consistent with the national interest to grant him access to classified information; advised him that his case would be submitted to an Administrative Judge for a determination as to whether his security clearance should be granted, denied, or revoked; and forwarded to him a copy of the Directive, which sets forth the security clearance adjudication guidelines and procedures. On September 28, 2022, Applicant responded to the SOR by admitting or denying the Guideline F allegations with comments and by providing one corroborating document that showed payments on the child support arrearage. FORM Item 2. In responding to the SOR, he was also provided the opportunity to request either a hearing before an Administrative Judge or a decision by the Administrative Judge based on the written record. He elected the latter option. *Id.*

¹ The personnel security clearance adjudication functions that were previously performed by the Defense Industrial Security Clearance Office (referenced in Directive ¶ 2.3) are now performed by DCSA CAS.

On November 4, 2022, Department Counsel’s FORM was mailed to Applicant. It contained Department Counsel’s arguments regarding Applicant’s security clearance worthiness and a copy of all relevant and material supporting evidence, including four credit reports produced between October 2020 and October 2022, court records regarding the judgments, and Applicant’s responses to interrogatories. The FORM and its forwarding letter advised Applicant that he had 30 days from its receipt to file objections or submit any additional evidence in rebuttal, explanation, extenuation, or mitigation, and, in the absence a response, the Judge’s decision would be “based solely on [the] FORM.”

In his brief, Applicant appears to claim that he did not receive the FORM and was not given an opportunity to respond to it. He states, “I recently started the position [at a defense contractor] and was still in processing with the contractor at this time and I was not onsite. I was not physically onsite until around Nov[ember] 14, 2022, so this is likely part of the reason I was not able to respond if any notifications were sent to my prior email on my previous contract with the [military].” Appeal Brief at 2. However, on November 30, 2022, Applicant signed a receipt for the FORM in which he provided his mailing address as well as work and alternate email addresses and telephone numbers. Correspondence File at 4. Having received the FORM on that date, he was required to submit his response to DOHA no later than December 30, 2022. Applicant did not submit any information within 30 days of receiving the FORM. DOHA Director Memorandum of January 20, 2023.

In short, Applicant was provided adequate notice of, and opportunity to be heard on, the reasons for revoking his security clearance eligibility. There is no basis to conclude that he was denied any due process rights afforded under the Directive. We resolve these assignments of error adversely to Applicant.

New Evidence

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

Analytical Issues

In his appeal brief, Applicant argues that his student loans were paid, and his other debts were either minor or were incurred more than seven years ago. He contends that the Judge’s decision does not properly account for such matters. However, as noted above, the FORM apprised Applicant of the documents and information that would be submitted to the Judge for a clearance determination. Under Directive ¶ E3.1.15, the burden was on Applicant to submit rebuttal, mitigation, or any other evidence that he wanted the Judge to consider that was not in the FORM, and he failed to submit such a response. We find no error in the Judge’s conclusion that Applicant failed to submit sufficient evidence of debt resolution to mitigate the security concerns arising from the alleged debts.

Applicant contends that the Judge failed to consider all the relevant factors in making her decision and misapplied the adjudicative guidelines. These arguments are, in effect, a challenge to the way in which the Judge weighed the evidence. None of his arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 21-01169 at 5 (App. Bd. May 13, 2022). Applicant states that holding a clearance is critical to his livelihood. The Directive, however, does not permit us to consider such consequences. *See, e.g.*, ISCR Case No. 17-03024 at 3 (App. Bd. Jan. 9, 2020).

Conclusion

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 the national security.”

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board