



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203
 (703) 696-4759**

Date: August 26, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 22-01807
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 7, 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 the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On May 31, 2023, the Government issued an amended SOR which incorporated some of the allegations in the original SOR and added additional allegations. Applicant requested a decision based on the written record, without a hearing. The Government submitted a File of Relevant Material (FORM) containing the entire record and the Government’s argument. Applicant did not file a response to the FORM. On July 18, 2024, Defense Office of Hearings and Appeals Administrative Judge Charles C. Hale issued a decision denying Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The amended SOR alleged nine delinquent consumer debts,¹ a federal tax delinquency of approximately \$59,200, and a state tax lien. In his response to the amended SOR, Applicant denied

¹ The allegation in paragraph 1(e) was withdrawn by the Government.

all allegations. In his response to the original SOR, Applicant had denied all allegations and also asserted that the debts were the responsibility of his former spouse. The Judge considered that amplifying information in reaching his decision finding against Applicant on all allegations.

On appeal, Applicant asserts that he “think[s] that the decision was made without allowing me to speak or provide proof.” This potentially raises a question of due process. ISCR Case No. 22-01317 at 2 (App. Bd. Apr. 5, 2023). However, Applicant’s assertion is incorrect. In both his response to the original SOR and to the amended SOR, Applicant specifically elected a decision based upon the administrative record. Enclosure 3 of the Directive explains the differences between a hearing and a decision based on the written record. Directive ¶¶ E3.1.17, E3.1.18. Applicant was provided a copy of the Directive when he received the original and amended SORs. With this information available to him, he chose to have his case decided on the written record. Nothing in either the record or Applicant’s appeal brief indicates that he lacked the mental competence or basic ability to make that decision.

Applicant received the FORM on March 8, 2024, and was given 30 days from its receipt to file objections or submit additional matters. The FORM contained the Government’s exhibits and advised him that, if he did not file objections or submit additional matters, his case would be assigned to a Judge “for a determination based solely on this FORM.” FORM at 5. Applicant did not submit a response to the FORM and the case was submitted for decision on May 13, 2024. The guidance contained in the Directive, the FORM, and the cover letter that accompanied it were sufficient to apprise a reasonable person of his or her rights and responsibilities. *E.g.*, ADP Case No. 15-00020 at 3 (App. Bd. Mar. 4, 2016). If Applicant wanted the Judge to consider matters that were not contained in the FORM, it was his obligation to provide that information. ISCR Case No. 17-02974 at 2 (App. Bd. Sep. 13, 2018). To the extent that Applicant is claiming his right to submit evidence was somehow impaired, we conclude such a contention is without merit. Merely because he now has decided that he might have presented a better case if he had proceeded differently, it does not follow that he was denied the opportunity to prepare and present his case. ISCR Case No. 00-0086 at 2 (App. Bd. Dec. 13, 2000).

As a substantive matter, Applicant asserts that “the information that this decision was based on is incorrect.” However, each of the debts is documented in the credit bureau reports that were submitted by the Government in the FORM. Applicant did not offer any evidence in support of an argument that those reports were erroneous or that he had made any efforts to dispute those debts.

In essence, Applicant is advocating for an alternative weighing of the evidence. An applicant’s disagreement with the judge’s weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to demonstrate that the judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *E.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, Applicant’s arguments fail to rebut the presumption that the Judge considered all of the record evidence.

We have considered the entirety of the arguments contained in Applicant’s appeal brief. The record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto.*

Ins. Co., 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). His conclusions and adverse decision are 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). “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b).

ORDER

The decision in ISCR Case No. 22-01807 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board