

KEYWORD: Guideline F

DIGEST: Applicant's decision regarding representation and the quantity of evidence to submit were not a function of inadequate notice of his procedural rights. Adverse decision affirmed.

CASENO: 14-03929.a1

DATE: 11/20/2015

DATE: November 20, 2015

In Re:)
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-----) ISCR Case No. 14-03929
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Applicant for Security Clearance)
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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 November 8, 2014, 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 August 13, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 he was denied due process and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant has been working for a Defense contractor since 2001. His SOR lists eleven delinquent debts. Applicant claims that he has contacted the creditors and is paying them, although this contention is not supported by the evidence.

The Judge’s Analysis

The Judge stated that Applicant had failed to provide documentary evidence of his claims that he is resolving his debts, nor did he provide evidence to support his dispute of one of the debts. In the whole-person analysis, the Judge noted that Applicant is married, has held the same job for many years, and is a homeowner, from which he concludes that Applicant has a stable and secure life. He also stated that Applicant’s having attended college is a matter in his favor. However, the Judge concluded that this evidence is not sufficient to outweigh the concerns arising from Applicant’s significant delinquent debt.

Discussion

Applicant cites to his having acted *pro se*. To the extent that he is arguing that this status impaired his ability to present his case for mitigation, we note that he received guidance from DOHA, by means of a letter dated March 25, 2015, concerning his right to representation as well as his right to present evidence in response to the File of Relevant Material (FORM). He also received a copy of the Directive, which sets forth these rights in detail. Moreover, in the FORM, Department Counsel stated that, absent “compelling documentation that Applicant has made financial arrangements and carried them out to meet his past due financial obligations, they preclude finding that he has the good judgment and reliability needed to be cleared for access to classified information.” The record shows that Applicant received adequate notice of his rights to representation and to present evidence in his own behalf. He was explicitly advised that corroborating evidence would be relevant and material to his case. Applicant’s decision to represent himself and his decision as to the quantum of evidence to submit were not due to faulty notice as to his rights. Applicant was not denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015).

Applicant submitted evidence on appeal that had not been provided previously. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant notes that many of his debts are delinquent student loans. He states that he has been paying them for the past three years. He made similar statements in his clearance interview. Applicant has not rebutted the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Moreover, given record evidence that Applicant has had financial problems for many years,¹ it was not unreasonable for the Judge to comment on a paucity of corroborating evidence for Applicant’s claims of debt repayment. Applicant has not shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-05251 at 3-4 (App. Bd. Oct. 5, 2015).

Applicant requests that we research available information about his student loans. However, the Appeal Board has no fact-finding power. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App. Bd. Aug. 17, 2015). Neither do we have authority to conduct further investigation in a case before us. Our authority is limited to the matters set forth in Directive ¶ E3.1.32. When the case was before the Judge, Applicant was responsible for presenting evidence and witnesses in support of his case for mitigation. Directive ¶ E3.1.15.

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge

¹Item 4 is an affidavit that Applicant completed in 2003, during the processing of a previous security clearance application, in which he acknowledged having delinquent debts and promised to address them.

Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board