

KEYWORD: Guideline F

DIGEST: The Directive does not authorize the Board to consider the adverse impact of an unfavorable decision. Adverse decision affirmed.

CASENO: 14-00508.a1

DATE: 01/23/2015

DATE: January 23, 2015

In Re:)
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-----) ISCR Case No. 14-00508
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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 April 24, 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 hearing. On October 31, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant’s SOR alleges several financial problems. For example, she failed timely to file her Federal and state income tax returns for tax years 2008, 2011, and 2012. She stated that she had filled out the forms but had forgotten to mail them. After the hearing she applied to the IRS and to her state for repayment plans, but as of the close of the record she did not have an approved plan. In addition to her tax problems, Applicant has other delinquent debts totaling about \$11,500. Much of this is for a car loan that Applicant had co-signed. The car was repossessed about a year ago. She testified that she had established a payment plan with this creditor, though she did not corroborate this testimony. She did show that she had resolved three SOR debts totaling less than \$500.

Applicant testified that her financial problems resulted from her assisting close and extended family members. She has no budget and does not regularly track her income and expenses.

Applicant has been a Federal employee for 19 years. She has held a clearance since 2001 and has worked for her current employer since 2012. She has received and completed security training and briefings. Her performance report shows that she exceeds expectations. She also submitted character references attesting to her trustworthiness and her dedication to family, community, and job.

The Judge’s Analysis

The Judge cited to evidence that a substantial portion of Applicant’s delinquent debts consisted of unpaid Federal and state income taxes. He stated that her laudable desire to assist family members did not constitute a circumstance outside her control. He also stated that Applicant had not demonstrated responsible action in regard to her debts. The Judge concluded that Applicant’s failure to pay her taxes raised significant concerns about her fitness to hold a clearance, suggesting that she may similarly fail to discharge her security obligations. In the whole-person analysis, the Judge noted Applicant’s years of experience as a Federal contractor, her candor about her financial problems, and her having held a clearance for over 20 years. He found that this favorable evidence was not enough to mitigate the security concerns raised by Applicant’s financial delinquencies.

Discussion

Applicant’s brief cites to her favorable evidence, such as her having completed security training and her clean security record. Applicant’s arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 13-00142 at 5 (App. Bd. Oct. 15, 2014). Neither do these arguments show that the Judge misweighed the evidence. Applicant implies that loss of her clearance has resulted in the loss of her job. The Directive does not allow us to consider the adverse impact of a unfavorable decision. *See, e.g.*, ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013). Applicant states that her duties do not require her to examine classified information. Our jurisdiction is limited to those issues set forth in Directive ¶ E3.1.32. We have no authority to address the extent to which an applicant may or may not actually have access to classified information during the course of their official duties. Applicant appears to challenge the Judge’s finding about the length of time she has held a clearance, asserting that it was 28 years. We note that the Judge stated that she had held one since 2001 in his Findings of Fact but in his whole-person analysis that she had held one for over 20 years. We find no reason to believe that this inconsistency exerted any effect on the Judge’s overall decision, however, and conclude that it is harmless.

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 Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board