

KEYWORD: Guideline F

DIGEST: The Judge's challenged findings are consistent with the record evidence. Applicant was adequately advised of her rights and obligations. Adverse decision affirmed.

CASENO: 14-03414.a1

DATE: 10/28/2015

DATE: October 28, 2015

In Re:)
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 -----) ISCR Case No. 14-03414
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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 August 5, 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 17, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Erin C. Hogan 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is employed by a Defense contractor. She has worked for this company since 2013. Applicant’s SOR lists numerous delinquent debts, the largest of which are liens for Federal and state taxes. In 2013, Applicant retained a debt relief organization to settle her debts. She terminated the relationship a little over a year later. There is no evidence concerning any debts that this organization may have resolved. In early 2014, Applicant retained a tax relief organization to help with her tax problems. A consultant filed Applicant’s taxes for the years under review but made mistakes, resulting in an audit and substantial tax bill. Applicant and her husband were in a repayment program, but they could not afford the monthly payments after her husband was laid off from his job.

Applicant claims to be making payments to settle her debts. She contends that several of them are beyond the seven year reporting period for credit reports. She states that she is of high character and has never been in trouble with the law.

Applicant is currently attempting to resolve her Federal tax debt on her own. However, her state and Federal tax problems are ongoing as of the close of the record. She stated that she had submitted an offer in compromise to the state but did not provide information as to whether it was accepted. In addition, one of the SOR debts was for a judgment entered against Applicant in late 2012. Applicant claims that she settled this debt, but she provided no corroboration.

Applicant did not provide information about her and her husband’s current financial status, such as her husband’s total net monthly income, total monthly expenses, and total monthly debt payments. She provided no evidence about her duty performance, nor did she provide character references.

The Judge’s Analysis

The Judge cleared Applicant of most of the SOR allegations. However, she entered adverse findings for the state and Federal tax liens, a judgment in favor of a bank, and two collection accounts. She stated that Applicant had no plans for resolving her largest debts. She also stated that, although Applicant’s financial problems had been affected by circumstances outside her control, Applicant had not presented enough evidence to permit a conclusion that she had acted

responsibly in regard to her debts. She also found that Applicant had taken little action to resolve her tax debts after terminating the contract with the tax relief firm. In the whole-person analysis, the Judge stated that Applicant apparently lacks a plan for addressing her largest debts and provided no evidence of her budget and income.

Discussion

Applicant has challenged some of the Judge's findings of fact. In doing so, she presents matters from outside the record, some of which post-date the Judge's decision. We cannot consider new evidence on appeal. Directive, Enclosure 2 ¶ E3.1.29. *See also* ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015). The Judge's decision was based upon Applicant's substantial, unresolved tax delinquencies and on three other debts, one of which was a judgment that the record shows was owed to a bank. Although Applicant claimed to have settled this debt, her documentation appeared to refer to the settlement of a debt to a different bank. The Judge's finding that Applicant did not corroborate her claim to have settled the judgment is consistent with the record that was before her. We have considered the totality of Applicant's challenges to the Judge's findings. Viewed in light of the record as a whole, the Judge's material findings are based upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015).

Applicant notes the Judge's finding that she did not provide character or job performance references or current financial information. She states that she was not aware that this was necessary. However, Applicant received notice of her right and obligation to provide a documentary response to the File of Relevant Material (FORM). She received this notice in the Department Counsel memo¹ as well as in the DOHA cover letter,² both of which accompanied the FORM. She also received a copy of the Directive, which explains her rights as well. Although the notice that Applicant received did not mention explicitly the particular types of evidence she could submit, it was sufficient to apprise her of her responsibilities. Applicant was not denied the due process provided by the Directive. *See, e.g.*, ISCR Case No. 14-03612 at 2 (App. Bd. Aug. 25, 2015) ("Although character references and performance evaluations were not explicitly mentioned, the guidance that Applicant received was sufficient to place a reasonable person on notice of the general extent of his right to present evidence.")

Applicant cites to evidence that was favorable to her. However, her argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015). Neither is it sufficient to show that the Judge

¹"[Y]ou . . . have 30 days from the receipt of this information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." FORM, dated April 23, 2015.

²"[Y]ou have an opportunity to review the attached copy of [the FORM] and submit any material you wish the Administrative Judge to consider or to make any objections you may have as to the information in the file. You have 30 days from receipt of this letter to submit your objections or any additional information you wish to be considered." DOHA Cover Letter, dated May 29, 2015.

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).

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board