

KEYWORD: Guideline F

DIGEST: The record shows that Department Counsel advised Applicant that she had 30 days from receipt of the FORM to submit documents “setting forth objections, *rebuttal*, *extenuation*, *mitigation*, or *explanation*, as appropriate.” Applicant’s copy of the FORM was accompanied by a DOHA cover letter, which advised Applicant of her right to submit objections “or any additional information you wish to be considered.” The DOHA official enclosed a copy of the Directive, which explains an applicant’s rights in detail, and he advised Applicant how she could access the Directive on line. Adverse decision affirmed.

CASENO: 15-00092.a1

DATE: 04/08/2016

DATE: April 8, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-00092
)	
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 17, 2015, 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 January 28, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 Applicant had been adequately apprised of her right to submit evidence and whether the Judge failed to consider all of the evidence in the record, resulting in a decision that was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant works for a Defense contractor in a job she has held since August 2014. She served in the National Guard from 1993 to 2002. Between late 2010 and early 2014, Applicant acquired numerous delinquent debts that are still outstanding. She provided documentation for her dispute of one of the SOR debts. She claimed to have disputed two others but provided no corroboration. Applicant’s delinquent debts resulted from chronic health problems at a time when she was uninsured. She also states that a divorce impaired her financial condition. Applicant documented some payments to creditors, although it is not clear whether they are for debts listed in the SOR. Her reply to the File of Relevant Material (FORM) does not shed light on this difficulty. Applicant provided no performance evaluations or evidence of community contributions.

The Judge’s Analysis

The Judge stated that the record is not clear as to the extent to which Applicant’s divorce and lack of insurance played an important role in her debts. He stated that she had not provided sufficient evidence of responsible action in regard to her debts, in any event. The Judge observed that most of Applicant’s documented payments were to creditors other than those in the SOR. He concluded that Applicant’s security concerns are not resolved through a whole-person analysis, insofar as the mitigating evidence in the record was limited.

Discussion

Applicant states that she could have submitted performance evaluations, if she had known that it was appropriate. The record shows that Department Counsel advised Applicant that she had 30 days from receipt of the FORM to submit documents “setting forth objections, *rebuttal*, *extenuation*, *mitigation*, or *explanation*, as appropriate.” (emphasis added) Applicant’s copy of the

FORM was accompanied by a DOHA cover letter, which advised Applicant of her right to submit objections “or any additional information you wish to be considered.” DOHA Letter, dated September 22, 2015. The DOHA official enclosed a copy of the Directive, which explains an applicant’s rights in detail, and he advised Applicant how she could access the Directive on line. Under the circumstances, the record shows that Applicant was adequately advised of her right to submit evidence in her own behalf. While the various communications from DOHA personnel did not specifically mention performance evaluations, these communications were sufficient to have placed a reasonable person on notice as to the general extent of an applicant’s right to present evidence. Applicant was not denied adequate notice of her rights. *See, e.g.*, ISCR Case No. 11-11221 at 3 (App. Bd. Aug. 19, 2013).

Applicant contends that the Judge did not consider all of the evidence, citing to her efforts at debt resolution, her military service, etc. The Judge made findings about this evidence. His ultimate conclusion that Applicant had not provided sufficient evidence to mitigate the concerns in her case is consistent with the record that was before him. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. It is an applicant’s job to present evidence sufficient to mitigate the concerns raised in his or her case, and the applicant bears the ultimate burden of persuasion that he or she should be granted a clearance. Directive ¶ E3.1.15. The Judge’s conclusion that Applicant had not met her burden of persuasion 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