

KEYWORD: Guideline F

DIGEST: Applicant appears to argue that she was unaware that she should respond to the FORM. The Board concludes she was not denied due process because she was advised in writing of her opportunity to submit documents demonstrating objection, rebuttal, mitigation, extenuation or explanation. Adverse decision affirmed.

CASENO: 12-09279.a1

DATE: 02/05/2016

DATE: February 5, 2016

In Re:)
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 -----) ISCR Case No. 12-09279
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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 December 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 November 21, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 she 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’s SOR lists delinquent debts that total about \$134,000, the majority of which are for student loans. In 2013, Applicant filed a Chapter 13 bankruptcy petition, listing over \$116,000 in liabilities, including \$2,000 in Federal taxes. In her answer to the SOR, Applicant acknowledged her debts, stating that she had overextended herself. She also states that this situation will not recur because of her bankruptcy plan, which will be completed in 2018. Applicant did not provide evidence that she had paid any of the required monthly payments of \$706. On her 2012 security clearance application, Applicant stated that her wages were being garnished for student loans from 1997. There is no record evidence as to the circumstances that caused Applicant’s financial difficulties. Applicant’s credit reports list debts that are not included in her bankruptcy petition, and the status of these debts is not clear.

The Judge’s Analysis

In concluding that Applicant had not mitigated the concerns arising from her delinquent debts, the Judge stated that there is no evidence of any payments. Additionally, Applicant provided no evidence that her problems were caused by circumstances that were outside her control, nor did she demonstrate responsible action in regard to them. The Judge noted her finding that Applicant had not supplied evidence of any payment under her bankruptcy plan. She also noted her finding that Applicant has other debts that are not addressed in her bankruptcy.

Discussion

Applicant states that from reading the paperwork she received that she needed only to be truthful in her presentation, which she claims she was. We construe this as an argument that she did not know that she needed to make a response to the File of Relevant Material (FORM) and, therefore, did not receive due process.

The FORM advised Applicant that the record as it then stood contained no documentary proof of payments under her bankruptcy plan, nor did it contain evidence of the circumstances that

caused her debts. The FORM stated to Applicant that she had “30 days in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation or explanation as appropriate.” It also stated that if she did not provide a response the Judge would make a decision based solely on the FORM that Applicant received. DOHA provided Applicant similar guidance in the cover letter that accompanied the FORM, and DOHA also sent her a copy of the Directive, with its explanation of her rights and responsibilities about responding to the FORM. In a DOHA proceeding, the applicant bears the burden of persuasion that he or she should have a clearance. Directive ¶ E3.1.15. Under the circumstances, Applicant’s failure to have provided a written response to the FORM cannot fairly be attributed to an absence of clear guidance regarding her rights. Applicant was not denied the due process afforded by the Directive.

Applicant cites to her SOR answer concerning her bankruptcy filing. She states that, had she submitted her attorney’s name and phone number, her case would have turned out differently. However, even if she had provided her attorney’s contact information, the Judge was not authorized to conduct additional inquiry, which would have conflicted with her duty to serve as an impartial fact-finder. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015). As stated above, Applicant bore the responsibility for presenting evidence in mitigation. As it stands, Applicant’s argument is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). Applicant states that she is missed at her job. The Directive does not permit us to consider the impact that an adverse decision might have on an applicant. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 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 Y. Ra'anan
Michael Y. 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