

KEYWORD: Guideline F

DIGEST: The Judge found that two SOR debts were duplicates of two others. For each pair she entered favorable findings for one debt and adverse findings for the other. An applicant suffers no prejudice when a Judge enters favorable findings for one of two duplicative allegations. Adverse decision affirmed.

CASENO: 12-11371.a1

DATE: 07/08/2016

DATE: July 8, 2016

In Re:

Applicant for Security Clearance

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) ISCR Case No. 12-11371
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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 February 11, 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 hearing. On April 19, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 the Judge’s formal findings were inconsistent 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 numerous delinquent debts, most of which the Judge resolved in his favor. She entered adverse findings for three: a revolving charge account for furniture, a medical debt, and a credit line. The first and third of these were reduced to judgments. The Judge found that Applicant had other debts which were not alleged, including \$12,000 for Federal taxes. The Judge stated that she was considering the non-alleged debts for such things as evaluating Applicant’s case for mitigation, performing a whole-person analysis, etc.¹ Decision at 9, note 4. Applicant attributed his financial problems to a diminution of his household income and to a medical problem.

The Judge’s Analysis

The Judge noted evidence that Applicant’s problems were affected by circumstances outside his control. However, she concluded that he had not demonstrated responsible action in regard to his debts. She cited to evidence that, due to a decrease in his monthly mortgage payments, Applicant had additional funds with which to address his debts but failed to do so. She also stated that wage garnishments in response to court-ordered judgments do not equate to good-faith efforts to resolve debts. She acknowledged that Applicant had a good work record but concluded that, based on his current circumstances, Applicant had not mitigated the concerns in his case.

Discussion

Applicant notes that the Judge found that two SOR debts were duplicates of two others. For each pair she entered favorable findings for one debt and adverse findings for the other. He argues that the Judge’s formal findings are not consistent. We find nothing inconsistent or erroneous about this. The Judge stated specifically that she found as she did in order to avoid the appearance that Applicant’s financial problems were worse than they actually were. Decision at 12. *See* ISCR Case No. 97-0440 at 2 (App. Bd. Nov. 23, 1998) to the effect that an applicant suffers no prejudice when a Judge enters favorable findings for one of two duplicative allegations.

¹*See, e.g.*, ISCR Case No. 09-07219 at 5 (App. Bd. Sep. 27, 2012).

Applicant’s brief addresses his tax debt. He cites to evidence, some of which is not in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant’s comments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). We find no error in the manner in which the Judge treated this debt.

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board