

KEYWORD: Guideline F

DIGEST: In a DOHA proceeding, it is the applicant’s job to present evidence in mitigation of the concerns raised by an SOR. Although *pro se* applicants are not held to the standards of attorneys, they are expected to take reasonable steps to protect their interests. Adverse decision affirmed.

CASENO: 15-04003.a1

DATE: 05/25/2017

DATE: May 25, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-04003
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Turkessa B. Rollins, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 2, 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 March 24, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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 an opportunity to present evidence 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 served in the military from 1990 until 2011, receiving an honorable discharge at the conclusion of her service. She holds a bachelor's degree. In 1999, Applicant was discharged in Chapter 13 bankruptcy. Beginning in 2001, Applicant started a business, which failed in 2011, and a business operated by her husband failed in 2010. Due to these failures, Applicant experienced financial difficulty, resulting in a second Chapter 13 bankruptcy petition that she filed in 2011. Applicant's petition listed over \$500,000 in liabilities, which included state income tax debts for 2002 and 2003 in the combined amount of about \$2,400. The discharge order noted that some debts, such as taxes, may not be discharged, and Applicant provided no documentation to show that her tax debts were resolved through the bankruptcy.

Applicant denied that she owed state taxes for the years in question, claiming that she lived in another state at the time. However, in her security clearance application (SCA) she disclosed that, from 2001 through 2005, she was in fact residing in the state claiming the tax obligation. Moreover, Applicant listed the delinquent taxes on her bankruptcy petition. She provided no evidence to substantiate her claim that she did not owe the taxes alleged in the SOR.

The Judge's Analysis

The Judge resolved two allegations regarding Applicant's bankruptcy petitions in her favor. However, he stated that she had not provided evidence that her tax debts were resolved. "More importantly, she did not provide any evidence to show that the circumstances leading to her recent bankruptcy are unlikely to recur or to show financial responsibility." Decision at 5. He stated that she had provided no corroborating evidence in support of her contention that she did not in fact owe the state taxes alleged in the SOR. He stated that Applicant failed to demonstrate that she is financially responsible.

Discussion

Applicant's appeal and Department Counsel's reply brief include matters from outside the record, which we generally cannot consider. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon threshold issues such as due process or jurisdiction. *See, e.g.*, ISCR Case No.14-00812 at 2 (App. Bd. Jul. 8, 2015). Applicant argues that, as a layperson, she did not fully understand the sort of documentary evidence that would have mitigated the concerns in her case. She argues that Department Counsel, "[f]or some unknown reason," did not supplement the record with updated bankruptcy documents. Appeal Brief at 3-4.

Applicant did not respond to the File of Relevant Material (FORM), which was transmitted to her in March 2016. Decision at 2. In February 2017, the Judge reopened the record to enable the parties to provide supplementary evidence, in light of the time that had transpired since Applicant's receipt of the FORM. Applicant submitted documents relevant to her circumstances. However, as

stated above, the Judge concluded that Applicant had not mitigated the concerns arising from her tax delinquencies.

The record shows that Applicant received notice of her right to provide a documentary response to the FORM. She received notice in the FORM itself, in the cover letter accompanying it, and in the Directive, a copy of which was included with the FORM. There is no reason to believe that Applicant was denied adequate notice of her right to submit evidence. Indeed, despite this notice, she made no response until prompted by the Judge in February 2017. Neither Department Counsel nor the Judge were obligated to obtain and present mitigating evidence on Applicant's behalf. *See, e.g.*, ISCR Case No. 12-02329 at 3 (App. Bd. Aug. 17, 2015);¹ ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015).

In a DOHA proceeding, it is the applicant's job to present evidence in mitigation of the concerns raised by an SOR. Directive ¶ E3.1.15. Although *pro se* applicants are not held to the standards of attorneys, they are expected to take reasonable steps to protect their interests. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014). In that regard, DOHA provided Applicant with guidance concerning, among other things, her right to employ counsel or to obtain other representation in presenting her case. DOHA Cover Letter, dated February 25, 2016. Applicant was not denied the due process afforded by the Directive.

Applicant argues that the Judge did not properly weigh the evidence. She cites to evidence that her taxes were included in her more recent bankruptcy discharge. However, the Judge's conclusion that Applicant had not provided enough evidence to resolve the issues surrounding her delinquent taxes was consistent with the evidence that was before him. In any event, the Judge's adverse decision relied not only on the tax delinquencies, but also on a paucity of evidence to show that Applicant's financial problems are unlikely to recur. Applicant's argument consists, in effect, of an alternative interpretation of the record, which 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. 15-08842 at 3 (App. Bd. Feb. 14, 2017).

The Judge examined the relevant evidence 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."

¹"A Judge is an impartial fact finder. As such, a Judge has no authority to advise an applicant on the quantum of evidence sufficient to mitigate the concerns raised in an SOR. Neither is a Department Counsel authorized to advise an applicant on how to present his or her case or otherwise to act as an advocate for an opposing party. For them to do otherwise would be inconsistent with their respective duties to make findings and conclusions or to represent the interest of the U.S." Internal citations omitted.

Order

The Decision is **AFFIRMED**.

Signed: William S. Fields

William S. Fields
Administrative Judge
Member 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