

KEYWORD: Guideline F; Guideline J

DIGEST: The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Adverse decision affirmed.

CASENO: 17-00238.a1

DATE: 10/25/2017

DATE: October 25, 2017

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In Re:)	
)	
-----)	ISCR Case No. 17-00238
)	
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 February 1, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 10, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Kilmartin 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 erred in his formal findings and whether the Judge’s decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline J were not raised as an issue on appeal. Consistent with the following, we affirm.

Applicant, who is 53 years old, has been an employee of a Federal contractor since 2013. He does not have a full-time job, but works on an as needed basis. He is awaiting full-time employment with another Federal contractor. He has never been married and has two adult children, ages 21 and 34.

The SOR alleged that Applicant had delinquent debts and failed to file timely his Federal income tax return for 2013. In the Statement of the Case, the Judge noted that he granted Department Counsel's motion to withdraw the allegation involving the \$148 delinquent debt in SOR ¶ 1.c. In the Formal Findings, the Judge found for Applicant on a judgment and two other debts, found both for and against Applicant on the withdrawn allegation in SOR ¶ 1.c, and found against Applicant on the Federal income tax filing delinquency. The Judge made no formal finding as to SOR ¶ 1.b, which alleged Applicant was past due over \$9,900 on a child/family support obligation that had a total balance of about \$32,700.

In the findings of fact regarding the child/family support obligation, the Judge stated that Applicant resolved a child support case brought by the mother of one of his children, but another case brought by another mother had an outstanding balance of about \$22,000 at the time of the hearing. Although Applicant had made payments in 2017 – one for over \$9,000 and others for smaller amounts – toward the remaining child support obligation, the Judge found that debt was longstanding, continuous, and not mitigated. The Judge specifically noted that both of Applicant's children are now adults. In his analysis, the Judge also concluded the mitigating conditions did not apply to the child support debt.

In the findings of fact regarding the 2013 tax filing delinquency, the Judge stated that Applicant testified that he filed that tax return approximately a year late and paid off a tax debt of about \$3,000 for that year. The Judge also noted that Applicant did not offer an adequate explanation for the tax filing delinquency, "except to say he was struggling with alcohol and drug addiction issues, and not acting responsibly around that time." Decision at 4. The Judge, however, acknowledged that Applicant stated he turned around his life and has been sober for over four years.

In his appeal, Applicant contends the Judge erred in finding against him on the withdrawn allegation in SOR ¶ 1.c. Reading the Judge's decision as a whole, we conclude that this was a typographical error in the formal findings and the Judge intended to find solely *for* Applicant on SOR ¶ 1.c and *against* Applicant on SOR ¶ 1.b. We further conclude that this error is harmless. *See, e.g.*, ISCR Case No. 05-02802 at 4 (App. Bd. Sep. 10, 2007)(typographical errors in the formal findings were harmless). *See also*, ISCR Case No. 91-1449 at n.2 (App. Bd. Apr. 26, 1993)("While we find the formal findings inconsistent [with the text of the decision], the inconsistency is not such error as requires remand. We read the decision in its entirety to discern the Judge's meaning, and it appears clear that the inconsistencies identified are the result of typographical error in the formal findings.") and ISCR Case No. 04-03795 at 2 (App. Bd. Jan. 25, 2007)(inconsistency between formal findings and decretal paragraph is harmless typographical error). Additionally, we note that Applicant recognized this was a typographical error by stating, "In reading the Formal Findings of Decision (dated 8/10/17) I am led to believe the Judge meant Subparagraph 1(b) (not 1.c) which refers to indebtedness specifically child support." Appeal Brief at 1.

Applicant also contends the Judge erred in using the plural term "credit card deficiencies"

in describing the alleged debts. Applicant notes that SOR ¶ 1.c, which was withdrawn, alleged the only credit card deficiency. We find this apparent error to be harmless because it likely had no effect on the outcome of the case. *See, e.g.*, ISCR Case No. 15-01494 at 3 (App. Bd. Jul. 8, 2016). The Judge’s decision is clear that he concluded only two SOR allegations – the child support and tax filing delinquencies – were not mitigated.

The remainder of Applicant’s arguments amount to a challenge of the Judge’s weighing of the evidence and his whole-person analysis. Applicant cites to such matters as his efforts to resolve the child support deficiency, his having only once filed his taxes late, his payment of the tax debt for 2013, and his current financial situation. The Judge made findings about many of those matters. It is well established that a party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-01652 at 2 (App. Bd. Jul. 7, 2017). Moreover, we conclude the Judge’s whole-person analysis satisfies the requirements of the Directive in that the Judge evaluated Applicant’s security-significant circumstances in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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 F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board