

KEYWORD: Guideline F; Guideline E

DIGEST: A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he was not adequately advised of those rights. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 16-01763.a1

DATE: 01/26/2018

DATE: January 26, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-01763
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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 November 24, 2016, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On October 25, 2017, 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 he was denied due process and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has worked for his current employer since 2015. He has never held a security clearance. His SOR alleges numerous delinquent debts, including charged-off accounts, collection accounts, a credit card obligation, and a medical debt. She found that the total amount of Applicant's debts is \$22,745.¹ Applicant disclosed in his clearance interview that he had experienced periods of unemployment. When confronted with his debts, he told the interviewer that he had not contacted all of the creditors. In his response to the SOR he claimed that he had paid his debts or had entered into payment plans. He admits that he has not received financial counseling and that his current financial condition is not good. He hopes that all of his debts will be paid in one to two years.

He provided no information about his current salary or savings, nor did he mention using a budget. He provided no documentation to verify the claims in his response to the SOR or to show that he had contacted creditors, paid debts, or otherwise attempted to resolve them.

The Judge's Analysis

The Judge stated that Applicant's debts are numerous and recent. She also stated that Applicant had not shown responsible action in regard to his debts, despite the presence of circumstances that were outside his control that affected his financial condition. She stated that she could not gauge Applicant's ability to resolve his debts because he had not presented sufficient mitigating evidence. She also noted that there were no character references, performance reports, or evidence that Applicant's problems have been resolved.

Discussion

Applicant contends that he did not know that he had to present detailed information to the Judge about his efforts at debt resolution or about his current salary, net worth, budget planning, etc. We construe this as a claim that he was denied due process. In the File of Relevant Material (FORM)², Department Counsel stated that, if Applicant were intent upon mitigating the concerns raised in the SOR, he should provide "documentary evidence in support of his good-faith actions

¹This is the amount that the Judge cited in the prefatory **Statement of the Case** section of the Decision. In her findings, she stated that the total amount was \$122,745, which Applicant challenges in his brief as being an error. The lower amount is, in fact, a correct total of the debts listed in the SOR. We note Applicant's argument but conclude that \$122,745 is a typographical error that did not affect the overall decision. The Judge's analysis had no references to the size of the delinquent debt. Rather, it focused on matters such as responsible and irresponsible conduct and lack of mitigation.

²Applicant's brief suggests that he did not understand that the Judge's references to the "FORM" were citations to a document known by its acronym. Instead, he seems to have thought they were reference to a form.

to pay back his creditors as well as set up payment arrangements[.]” Department Counsel also notified Applicant that

[t]here is insufficient information to support granting [him] a security clearance based on the whole-person concept . . . [He] has not yet provided character reference letters and/or performance evaluations . . .to support that he is an individual of honorable character who exercises sound judgment and is therefore suitable to safeguard classified information. As the record stands, absent additional documentation, Applicant’s Answer is insufficient to meet his burden of mitigation and effectively address the Government’s concerns.

The FORM was accompanied by a cover letter which stated that Applicant had an opportunity to submit any material that he wanted the Judge to consider or to lodge any objection he might have to the evidence included in the FORM. Applicant had also previously received a copy of the Directive, which describes in some detail his rights and responsibilities regarding the presentation of evidence in mitigation. However, as the Judge noted in the Decision, Applicant submitted nothing in response to the FORM. The record shows that Applicant received sufficient notice of his responsibility to present mitigating documentation, and his failure to have responded to the FORM cannot reasonably be attributed to any defect in the guidance provided him by DOHA. A review of the entire record discloses no basis to conclude that Applicant was denied the rights due him under the Directive or that he was not adequately advised of those rights. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017).

Applicant cites to the responses that he made to the investigator’s questions during his clearance interview. He argues that the Judge failed to apply the whole-person concept in evaluating his case. However, Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017). Contrary to Applicant’s argument, the Judge appears to have satisfied the requirements of Directive ¶ 6.3, in that she considered the totality of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 16-00578 at 2-3 (App. Bd. Sep. 26, 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, 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board