

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 11, 2016, 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 July 2, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Pamela C. Benson 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 Applicant 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 earned a bachelor’s degree in 2000 and a law degree in 2003. She divorced in 2012 and has an adult offspring. Since early 2011, she has been laid off from employment, forced to resign, and voluntarily left a job. She has been working with a Federal contractor since 2017 and held a clearance from 2007 until 2013.

Applicant has numerous delinquent debts, including student loans, medical accounts, utility bills, credit cards, a second mortgage, etc. The SOR also alleges a home foreclosure. They total over \$129,800. She attributed her financial problems to her marital difficulties, her husband’s lack of work, her own unemployment, and relocation expenses. Applicant admitted all of the SOR allegations but one, and the Judge found that the record established the debts as well. She has not provided corroborating evidence that she had made payments pursuant to an agreement regarding her student loans. She disputed some of her debts, and she submitted payment receipts, all of which post-date Applicant’s receipt of the File of Relevant Material (FORM). Although the Judge found that some of Applicant’s debts have been resolved, she stated that the unresolved ones exceed \$100,000.

The Judge’s Analysis

The Judge stated that Applicant had not established that her financial problems are unlikely to recur or no longer cast doubt upon her current reliability. Although Applicant’s problems may have been affected by circumstances outside her control, the Judge concluded that Applicant had not demonstrated responsible action in regard to them. The Judge stated that Applicant did not provide documentation to show that the second mortgage had been resolved. Although Applicant claimed that several debts were removed from her credit report following disputes, she elsewhere admitted that many of her disputed accounts were her own.

Discussion

Applicant states that in her Response to the FORM that she requested “to attend the adjudication[.]” Appeal Brief at 6. As a consequence, she argues that she was precluded from clearing up confusion regarding her student loan debts.

We note that the Response contains the following language: “I am available to come in for testimony if needed, as I currently reside in the DC area.” It also states “I appreciate the opportunity to respond prior to the adjudicative hearing.” We conclude that this language does not establish a request to convert the case to a hearing but, at best, a willingness to testify if needed at a purported upcoming hearing of some kind. Department Counsel did not request a hearing, and Applicant herself elected a decision on the written record after having received DOHA guidance regarding her right to choice of forum. If Applicant believed that there was nevertheless going to be some sort of hearing, it was not due to the nature or quality of the guidance that she received from DOHA. Indeed, she completed an attachment to her SOR Answer, checking a block that requested a “decision based on the administrative (written) record, without a hearing before an Administrative Judge.” A forum request must be sufficiently clear so that DOHA personnel are on notice as to the party’s desires.¹ *See, e.g.*, ISCR Case No. 12-10335 at 4 (App. Bd. Dec. 29, 2017). In this case, Applicant clearly and unambiguously chose a decision on the written record and was not denied an opportunity to choose a hearing. She was not denied due process.

Applicant argues that the Judge erred in concluding that her second mortgage had not been resolved. She argues that this debt was satisfied through the foreclosure process. Her argument is not clearly born out by the record. However, even if a debt has been paid or resolved through a legal process such as a foreclosure proceeding, a Judge may still consider the applicant’s underlying circumstances in evaluating his or her eligibility for access to classified information. *See, e.g.*, ISCR Case No. 16-02246 at 2 (App. Bd. Dec. 8, 2017). Applicant’s arguments on appeal are, in effect, a disagreement with the Judge’s weighing of the evidence, 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. 17-01181 at 4 (App. Bd. Apr. 30, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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.”

¹To be entitled to a hearing, a party must request one. *See* Directive ¶ E3.1.7 that states, in pertinent part, “If the applicant has not requested a hearing with his or her answer to the SOR and Department Counsel has not requested a hearing within 20 days of receipt of the applicant’s answer, the case shall be assigned to the Administrative Judge for a clearance decision based on the written record.”

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