

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 October 31, 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 October 18, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 failed properly to apply the whole-person concept. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant’s SOR lists numerous delinquent medical debts, which are of relatively small amounts. It also lists a debt for nearly \$11,000, which is a charged-off account resulting from an automobile repossession. Applicant advised that he had co-signed a loan with his niece, who allowed the car to be repossessed after only a few months. Although the creditor notified him of the debt, Applicant did not pay it because he did not believe it was his responsibility to do so. After being notified that the statute of limitations had run for this debt, Applicant took no further action. The Judge found that there is no evidence in the record that this debt has been resolved. Applicant’s character references state that he is honest, trustworthy, and hardworking. Applicant is involved in a local youth sports league.

The Judge concluded that Applicant’s having under \$2,000 in medical debts did not impair his security eligibility. However, he reached the opposite conclusion for the large automobile debt. The Judge noted that, as co-signer of the loan, Applicant had the same responsibility to pay as did his niece and was obligated on the deficiency balance after the repossession sale. He concluded that Applicant’s refusal or unwillingness to satisfy this legal obligation shows that he failed to act responsibly. Though noting Applicant’s favorable evidence, he held that Applicant had failed to meet his burden of persuasion in mitigating the concerns arising from the automobile debt.

Discussion

Applicant raises an issue of due process, citing to a series of communications he had with the Judge. The Judge advised that, based upon a reading of Applicant’s SOR response, he was concerned that Applicant may have desired a hearing despite having requested a decision on the

written record. The Judge advised Applicant that he himself would not get in contact with the character references that Applicant had cited in his response but that if these references were important to his case, Applicant could request a hearing. Applicant contends that he surmised from this that character references were not important and, accordingly, did not seek a hearing. He attributes his decision to a lack of experience in the DOHA process.

Applicant's description of his communications with the Judge is generally accurate. The Judge noted Applicant's SOR response. Appellate Exhibit I, Email from Judge to Applicant, dated October 10, 2017. In this response, Applicant had provided a list of witnesses and requested that, before the Judge rendered a decision, "calls be place[d] to those that know me . . . I am confident that each will vouch for my character." SOR Response at 2. The Judge told Applicant that he would "not contact those people or anyone else for that matter . . . If this makes a difference to you, you may change your mind and request an in-person hearing." Appellate Exhibit I. As he notes in his Appeal Brief, Applicant did not request a hearing.

We find nothing in the Judge's communications with Applicant that would have dissuaded a reasonable person from requesting a hearing had he been inclined to do so. In particular, we find nothing in them that would suggest that the Judge would not consider Applicant's character references or that they were not relevant. The Judge merely advised Applicant that it was not the Judge's task to conduct an inquiry by calling and interviewing witnesses, which is correct. Judges do not call witnesses or otherwise conduct investigations on behalf of either party to the proceeding. To do so would be inconsistent with the Judge's role as an impartial fact-finder. *See, e.g.*, ISCR Case No. 15-05310 at 2 (App. Bd. Dec. 1, 2017). Applicant was not denied due process.

Applicant contends that the Judge failed properly to apply the whole-person concept. He states that it is unfair for the Judge to have focused on the one incident regarding the automobile repossession to the exclusion of other evidence that shows Applicant to be trustworthy. Applicant's argument is 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.15-07062 at 2 (App. Bd. Nov. 21, 2017). Although the Judge made findings about Applicant's character evidence and addressed this matter in his analysis, his conclusion was that Applicant's failure to acknowledge responsibility for a loan that he co-signed raised serious questions about Applicant's judgment. We find no reason to conclude that the Judge failed to consider the evidence in its totality, as a whole-person analysis requires. *See, e.g.*, ISCR Case No. 15-03592 at 2 (App. Bd. Jun. 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, 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board