

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 29, 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 hearing. On December 14, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On March 19, 2018, we remanded the case to the Judge to consider evidence that did not make it into the record. On May 7, 2018, the Judge issued an adverse Decision on Remand, Applicant appealed pursuant to the Directive.

Applicant raises the following issue on appeal: 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 and Analysis

The SOR listed numerous delinquent debts. The Judge entered favorable findings regarding all but two of them, a charged-off credit card debt for nearly \$19,000 and a charged-off department store account for over \$2,000. Applicant claimed that he had paid taxes due when the creditor released him from further liability. However, he did not submit corroborating evidence, such as Form 1099-Cs or tax returns showing payment of taxes. Applicant’s counsel sent a letter to the creditors, requesting the issuance of a 1099-C.¹ Counsel also stated to the Judge that the evidence, viewed as a whole, shows that these debts have been resolved.

The Judge noted Applicant’s reliance on the statute of limitations concerning the two debts listed above, which in and of itself is not sufficient to mitigate concerns arising from delinquent debts. The Judge observed that Applicant had not provided proof of payment, correspondence with the creditors, evidence of attempts to negotiate a settlement, or other efforts at debt resolution. In the whole-person analysis, the Judge concluded that Applicant’s failure to address these two debts impugned his reliability and trustworthiness.

Discussion

Applicant contends that the Judge did not properly weigh the evidence that he submitted. He contends that the record, viewed as a whole, shows that he has attempted to resolve the delinquent debts that the Judge found against him. However, Applicant’s brief amounts to 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). Moreover, a charged-off debt is not equivalent to one that the creditor has forgiven, as Applicant appeared to urge in his case in mitigation. *See,*

¹“It is my client’s understanding that such debt was previously charged off by your entity. We are requesting that you forward us a 1099-C tax form in accordance with that understanding.” Decision on Remand at 4, quoting from Applicant Exhibit U, Letter from Counsel to Creditor dated April 16, 2018, which was issued after the case was remanded.

e.g., ISCR Case No. 10-01188 at 2 (App. Bd. Jun. 15, 2011). *See also Dacumos v. Toyota Motor Credit Corp.*, 287 F.Supp. 3d 1152 at 1157 (W.D. WA 2017) (“[A] charge off does not extinguish liability for the debt”) (citing *Plaza Bank v Green Family Trust*, 2011 U.S. Dist. LEXIS 141044, *15-16, WL 6102883, at *5 (D. Nev. Dec. 7, 2011)). We find no reason to disturb the Judge’s overall adverse conclusions.

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