

KEYWORD: Guideline F

DIGEST: First, a Judge has no authority to act as an investigator in a DOHA case. Any attempt by a Judge to independently investigate allegations (*e.g.*, contact creditors) would conflict with his or her role as an impartial fact-finder. Second, the Directive does not permit us to consider the impact of an unfavorable decision on an applicant. Third, the Directive assigns to Applicant the burden of presenting evidence to rebut, explain, extenuate, or mitigate facts of security concern. Adverse decision affirmed.

CASENO: 17-01371.a1

DATE: 11/16/2018

DATE: November 16, 2018

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In Re:	)	
	)	
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	)	
	)	
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 March 2, 2018, 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 September 28, 2018, 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 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 Finding of Fact**

Applicant is divorced with two children.<sup>1</sup> The SOR alleged that he had delinquent debts totaling about \$83,000, including child support arrears of about \$68,000. He admitted four of the alleged debts, including two of three child support allegations, and credit reports established the remaining debts. After his discharge from the military, he could not find work to hire legal representation to apply for a modification of his child support obligation.

When the SOR was issued, Applicant was deployed overseas. He provided a letter showing a recent misdirection of his child support payments as well as a returned payment check. For one of the child support debts, he stated that about \$1,075 was being withheld monthly from his paychecks, but did not provide a pay stub verifying his claim. He also stated this debt was past due for about \$20,100. It was unclear from a child support financial activity report for 2017 and 2018 what actual payments were made.

Applicant stated that \$750 was deducted monthly from his pay for another child support debt. It appears two child support debts were merged into one account. Applicant claimed a third child support debt (SOR ¶ 1.g for about \$8,500) is not valid and should have been absorbed into the other accounts, but there is no documentation supporting that claim.

One debt for about \$78, which was paid, was apparently alleged twice in the SOR. Two other debts were resolved. He made representations about his efforts to resolve two additional debts, including one for about \$14,900, but did not provide sufficient supporting documentation.

### **The Judge’s Analysis**

Applicant made inconsistent child support payments, which resulted in substantial arrearages. A recent payment mix up occurred while he was deployed. While he is adhering to

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<sup>1</sup> Applicant’s security clearance application (SCA) reflects that he was divorced twice. He did not list any children in Section 18 (Relatives) on his SCA, but listed a child support arrearage in Section 26 (Financial Record). In his background interview, he stated that he was providing child support to both of his ex-wives.

good-faith efforts to address the arrearages, he did not produce sufficient documentation to mitigate that debt. He has settled or paid two other accounts.

## **Discussion**

In his appeal brief, Applicant indicated that he encountered difficulty in providing information regarding the SOR allegations. He stated, “My primary argument is that I have been back and forth between the United States and [an overseas location] for much of this case which has made it difficult to provide all the pertinent information needed in a timely manner and continue my employment to provide financial relief for my debts and my family.” Appeal Brief at 1. To the extent he may be arguing that he was denied due process, we do not find that argument persuasive. In responding to the SOR on April 27, 2018, he neither requested additional time to present matters nor indicated that he was experiencing any difficulties in forwarding information about the alleged debts. In responding to Department Counsel’s File of Relevant Material (FORM) on June 23, 2018, he again did not request additional time to present matters. While he did indicate in his FORM response that he experienced difficulties in providing information when he responded to the SOR, he stated he was providing documentation on the debts he resolved but did not indicate that he was still experiencing any difficulties in providing information. A review of the record reflects that Applicant was provided the procedural rights set forth in Executive Order 10865 and the Directive. His assertions about experiencing difficulties in providing matters fail to establish that his due process rights were infringed in any manner.

Applicant also argues that he provided the names and numbers of his creditors for verification due to the difficulties presented by his circumstances and that he needed to continue working to stay current on his debts. These arguments do not warrant any relief. First, a Judge has no authority to act as an investigator in a DOHA case. *See, e.g.*, ISCR Case No. 14-00434 at 3 (App. Bd. Jan. 20, 2015), citing ISCR Case No. 11-03500 at 3 (App. Bd. Feb. 28, 2012) for the proposition that any attempt by a Judge to independently investigate allegations (*e.g.*, contact creditors) would conflict with his or her role as an impartial fact-finder. Second, the Directive does not permit us to consider the impact of an unfavorable decision on an applicant. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015). Third, the Directive assigns to Applicant the burden of presenting evidence to rebut, explain, extenuate, or mitigate facts of security concern. Directive ¶ E3.1.15.

Applicant challenges the Judge’s finding that his child support financial activity report for 2017 and 2018 was unclear. At first glance the report is not easy to decipher; however, it does reflect the child support payments that Applicant made to one of his ex-wives from April 2017 to April 2018. While the Judge erred in finding the actual payments were unclear, this was a harmless error because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). Of note, the report reflects that Applicant’s total arrears on that account grew from \$18,000 to over \$19,400 during the year in question, which undermines its mitigative value. Applicant’s Exhibit (AX) A.

The Applicant notes that two of the alleged debts were duplicates. While the Judge made a finding that two of the SOR allegations were for the same debt, she also found against him on each

of those allegations. In the past, we have stated that, when the SOR alleges the same delinquent debt twice, the Judge should find in favor of Applicant on at least one of those allegations. *See, e.g.*, ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). In this case, however, the Judge’s failure to find in favor of Applicant on one or both of the allegations pertaining to that single debt was harmless because of the insignificance of that debt in relation to the other unresolved debts. *Id.*

Applicant further argues, among other matters, that some of his debts were resolved or being paid, that he never intentionally ignored his debts, that he attempted to work with his creditors, and that his current job has given him the ability to satisfy his delinquent debts and stay current on his other debts. These arguments, in essence, amount to a disagreement with the Judge’s weighing of the evidence and are not sufficient to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

Applicant has not identified any harmful error in the Judge’s decision. 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