KEYWORD: Guideline F

DIGEST: We note the Judge's statement in the analysis that he is not convinced that Applicant would abide by a different payment arrangement, insofar as he had failed to make sufficient child support payments in the past. Given the Judge's analysis, we find no reason to conclude that, even if the document in question had been included in the record, it would have resulted in a different decision. Adverse decision affirmed.

CASENO: 17-01915.a1

DATE: 11/21/2018

DATE: November 21, 2018

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 June 21, 2017, 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 September 10, 2018, 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.

Applicant raised the following issue on appeal: whether he submitted evidence that was not included in the record or considered by the Judge. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge made the following pertinent findings of fact: Applicant has been employed as a Government contractor since 2015. He has a master's degree. Applicant served in the military for seven years and later in the Reserves. He has two children, ages seven and nine.

Applicant was unemployed from late 2013 until mid-2014. His current income is about $145,000. He pays about $1,000 a month in child support payments. Applicant's SOR lists a child support debt of over $35,500. He had been unable to make his payments due to his period of unemployment. In 2015, the court increased Applicant's monthly payments to about $1,580, with a specified amount going towards his arrearage. These payments were to be made by means of a wage lien. Applicant attempted unsuccessfully to get his payments reduced, and for a while he paid about $800 a month and has been paying $1,000 a month since 2016 or 2017. He is hoping to settle his arrearage. Applicant did not provide proof of payments after mid-2017, and his arrearage is now about $42,000. Three weeks before his security clearance hearing, Applicant hired an attorney to help resolve this debt.

In May 2018, Applicant submitted to the court a request for a change to his child support obligation. The proposed amendment allows Applicant to make his child support payments directly to the mother. It requests the court terminate both his child support obligation and the arrearage. The Judge held the record open until September 2018 for Applicant to submit the signed order. However, the Judge did not receive post-hearing documentation from Applicant after May 2018.[1]

The Judge's Analysis

The Judge cleared Applicant on all of the SOR allegations except the one concerning child support, noting that Applicant did not explain why he paid reduced amounts of child support in 2017 and thereafter. Significantly, he stated that, even if Applicant had provided a new child support payment plan he was not convinced that Applicant would abide by it, citing to evidence that, in 2015, Applicant had been required to make his payments automatically from his salary but failed to comply.

[1]The hearing occurred on April 2, 2018.

Discussion

Applicant contends that he submitted evidence that did not make it into the record. He states that he had a signed copy of a court order. This order removed his obligation to make child support payments to a state agency and abolished his arrearage to the agency. He states that he sent this document to the attorney who represented him at the hearing[2] and that he sent a copy to the Judge as well. He contends that this document, had it been considered, would demonstrate mitigation of the one debt that the Judge resolved against him. Applicant's brief contains new evidence, which we generally cannot consider. Directive ¶ E3.2.29. However, we will consider new evidence on threshold issues such as due process or jurisdiction. *See, e.g.*, ISCR Case No. 17-01472 at 2 (App. Bd. Aug. 6, 2018).

Applicant has attached to his brief a copy of a signed court order that removes his obligation to make payments to the state child support agency and that removes his arrearage to that agency. As he contends, this document is not part of the record. However, the record does contain a signed copy of the parties' motion setting forth the proposed terms of the requested court order and the reasons therefor, along with an unsigned copy of a suggested order submitted for the court's consideration and use. The final order that Applicant has included in his brief contains similar terms to those set forth in documents included in the record and that the Judge addressed in his decision. We note the Judge's statement in the analysis that he is not convinced that Applicant would abide by a different payment arrangement, insofar as he had failed to make sufficient child support payments in the past.[3] Given the Judge's analysis, we find no reason to conclude that, even if the document in question had been included in the record, it would have resulted in a different decision.[4] Therefore, even if this document failed to make it into the record due to fault by personnel at DOHA,[5] any such error would be harmless. *See, e.g.*, ISCR Case No.17-01181 at 4 (App. Bd. Apr.

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[2]To the extent Applicant has a claim regarding a purported failure by his attorney, there is no relief available in this forum. A remedy, if there is one, would be found elsewhere. *See, e.g.*, ISCR Case No. 03-21045 at 3 (App. Bd. Feb 21, 2007).

[3]The written motion signed both by Applicant and the mother asserted that, while Applicant's debt to the state child support agency would be removed, he would still be obligated to make arrearage payments directly to the mother. "[T]he parties have agreed that [Applicant] will now pay child support directly to the [mother], *including an amount that will go toward the arrears.*" (Emphasis added). Applicant's Exhibit M. Therefore, while the evidence that Applicant has attached to his brief removes his liability to the state, it does not discharge the arrearage itself, it only changes the payee.

[4]Moreover, even if an applicant has actually resolved a debt, the Judge may still consider the circumstances underlying the debt for what they reveal about the applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Jun. 18, 2015).

[5]Applicant states in his brief that he mailed a copy of this document to the Judge. He did not include a mailing receipt or some other document in corroboration. He also asserts that he was confused by the Judge's having extended the date by which Applicant was to submit his additional evidence. Insofar as he claimed he mailed the court order within the time frame established by the Judge, we conclude that Applicant has not demonstrated any harm by virtue of the Judge's actions. Indeed, extending the length of time within which an applicant may submit additional documentation is by definition favorable to the applicant.

30, 2018). We conclude that there is no reason to remand the case to the Judge to take in the additional evidence.

We have examined Applicant's brief in its entirety and conclude that he has not established harmful error by the Judge. 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."

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