

KEYWORD: Guideline F

DIGEST: We find no reason to believe that Applicant was denied a fair opportunity to present his case in mitigation. Adverse decision affirmed.

CASENO: 17-02463.a1

DATE: 09/10/2018

DATE: September 10, 2018

In Re:)	
)	
-----)	ISCR Case No. 17-02463
)	
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 August 30, 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 June 11, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 Findings of Fact

Applicant began working for his current employer in 2016. He has prior military experience. He underwent a period of unemployment before taking the job that he holds now, during which time he fell behind on his bills. He has acknowledged that he did not plan ahead for such things as a job loss, having no savings. His current job pays less than the previous one. Therefore, it has taken him some time to address his financial problems.

Applicant’s SOR lists four delinquent debts, i.e., a repossessed vehicle, a credit card, and a medical account that was alleged twice. After receiving the SOR, Applicant hired a debt consolidation company, which focused on addressing Applicant’s wife’s debts before those incurred by Applicant. After the hearing, Applicant terminated his relationship with this company and decided to get in touch with creditors himself. He states that, as of January 2018, he has set up payment plans with each of his creditors.

The Judge’s Analysis

The Judge noted Applicant’s unemployment and his failure to have planned for such a financial emergency. She also noted that he cancelled his arrangement with the debt consolidation company. Though commending him for having set up payment plans, the Judge concluded that he could have done so long ago. Accordingly, she concluded that Applicant had not established a track record of debt payment. She concluded that the evidence is not sufficient to mitigate the concerns arising from Applicant’s financial problems.

Discussion

Applicant contends that he did not have enough time before the Decision to show that his debts had been resolved. The Judge and Applicant discussed at length the additional evidence he would provide at the close of the hearing. Tr. at 73-77. The Judge gave him an opportunity to present additional documents after the hearing, which Applicant did. We find no reason to believe that Applicant was denied a fair opportunity to present his case in mitigation. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017) for a description of the due process rights that the Directive affords applicants in DOHA proceedings.

The balance of Applicant's brief is, in effect, a challenge to the way in which the Judge weighed the evidence. However, a disagreement with the Judge's weighing of the evidence is not sufficient to establish error. *See, e.g.*, ISCR Case No. 17-01181 at 4 (App. Bd. Apr. 30, 2018). The Judge relied in large measure upon evidence that Applicant was dilatory in setting up payment plans or otherwise attempting to resolve his debts, which is sustainable. *See, e.g.*, ISCR Case No. 17-00294 at 3 (App. Bd. Aug. 8, 2018) (Timing of an applicant's corrective action is relevant in evaluating an applicant's case for mitigation).

Applicant cites to his unemployment, his military service, and to other matters that are favorable to him. The Judge made findings about many of the things that Applicant has addressed in his brief. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-02391 at 4 (App. Bd. Aug. 7, 2018). Applicant notes that his continued employment depends on retaining his clearance. The Directive does not permit us to consider the impact that an adverse decision might have upon an applicant. *See, e.g.*, ISCR Case No. 17-01950 at 2 (App. Bd. Aug. 7, 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."

Order

The Decision is **AFFIRMED**.

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board