

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 10, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 30, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzleman 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, who holds a bachelor’s degree, has worked as a Federal contractor since 2003. She was previously granted access to classified information in 2003 and 2008. Applicant failed to pay Federal taxes for tax years 2007 and for 2009 through 2011. She claimed that her tax problems were the result of part-time employment as a 1099 contractor, inconsistent income, and her having been charged twice by the IRS for withdrawals from her 401(k) plan. Although the SOR alleged that Applicant owed nearly \$40,000 to the IRS, the Judge found that, by the close of the record, this liability was about \$27,000. Applicant provided documentation that she has a payment plan with the IRS, with \$607 due at the end of October 2017. This document states that her last monthly payment was \$0. Moreover, it is not clear which tax years are covered in this payment plan.¹ Applicant’s SOR also alleges several delinquent medical debts, which Applicant denied because they should have been submitted to her insurance company. Despite these denials, Applicant entered into payment plans for some of her debts. She disputed one of them because she could not locate it and because it did not appear on her credit report. In completing her security clearance application (SCA), Applicant disclosed her tax problems for 2007. She did not disclose delinquencies for other years. In her answer to the SOR, Applicant claimed that she was not aware of her tax issues because she relied on a certified public accountant to file for her.

The Judge’s Analysis

The Judge found that Applicant’s financial problems, including her tax liabilities, were recent and recurrent. She stated that Applicant did not demonstrate responsible action in regard to her debts and that she had provided insufficient evidence of timely and consistent payment. The Judge also stated that, despite her dispute of certain debts, Applicant did not offer documentary corroboration. Concerning Guideline E, the Judge concluded that Applicant’s experience with the clearance process, her education, and the insufficiency of her explanations demonstrated that her omissions from the SCA were deliberate. She concluded that the evidence raised serious doubts about Applicant’s current reliability, trustworthiness, and good judgment.

¹The SOR also alleged that Applicant failed to file her tax returns in a timely fashion for 2015 and 2016. The Judge resolved this allegation in Applicant’s favor.

Discussion

Applicant argues that the SOR misstated the true amount of her debt to the IRS. She contends that, at the time the SOR was issued, her debt had been reduced significantly from what was stated in the allegation. She further argues that the Government failed to present evidence of the security concern raised by Applicant's tax liabilities.

We agree with Applicant that there is a variance between the SOR allegation as it is written and evidence that her tax debt was substantially less as of the close of the record. The Judge's finding about the extent of Applicant's tax indebtedness is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. A variance between allegation and proof is material only when the extent of the variance is so great that the allegation fails to serve as reasonable notice to the applicant of the concerns raised, thereby subjecting him or her to unfair surprise when confronted with the Government's evidence. *See, e.g.*, ISCR Case No. 15-08255 at 3 (App. Bd. Aug. 22, 2017). In the case before us, we find no reason to believe that Applicant was denied adequate notice of the concerns raised by her indebtedness. That the SOR alleged a greater tax debt than the record evidence subsequently established did not preclude Applicant from presenting a meaningful case for mitigation.

On the question of whether the Government met its burden of production, we note that the Directive presumes that there is a nexus between admitted or proved facts under any of the Guidelines and an applicant's eligibility for access to classified information. *See, e.g.*, ISCR Case No. 16-01900 at 3 (App. Bd. Apr. 19, 2018). In the case before us, the record, which includes IRS tax transcripts and Applicant's answer to the SOR, shows that Applicant failed to pay her full tax obligation for several years and that she also had delinquent medical debts. The evidence, viewed as a whole, is sufficient to raise concerns under Guideline F that Applicant may be lacking in judgment and reliability. We resolve this issue adversely to Applicant.

Applicant challenges the Judge's finding that her omissions were deliberate. However, the Judge reasonably explained the basis for her finding, evidence that the IRS sent notices, that Applicant had outstanding tax obligations, along with evidence of her education and business experience.² As with the Judge's findings about Applicant's tax debt, her finding that Applicant's omissions were deliberate is established under the standard set forth in the Directive.

The remainder of Applicant's brief consists of a challenge to the Judge's weighing of the evidence and to her contention that the Judge did not consider all of the evidence, for example her evidence of debt reduction and her claim that she was not aware of the extent of her indebtedness.

²For 2009, 2010, and 2011, Applicant's IRS transcripts reflect that the IRS sent notices on several occasions before she submitted her SCA. On some of those occasions, the transcripts reflect activity by Applicant shortly after the notices were sent, suggesting she was responding to the notices. However, the transcripts also show other examples where the IRS sent notices and no activity appears to have been taken in response to said notices. Item 2 of Department Counsel's File of Relevant Material.

In presenting her arguments, Applicant includes evidence from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-01077 at 3 (App. Bd. Apr. 25, 2018). An ability to argue for a different interpretation of the evidence is not enough to show that the Judge mis-weighed the evidence.

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