

KEYWORD: Guideline F; Guideline J

DIGEST: Any error regarding by the Judge regarding Applicant’s child support payments is harmless given the totality of the record evidence. Adverse decision affirmed.

CASENO: 06-22871.a1

DATE: 01/24/2008

DATE: January 24, 2008

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 06-22871
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 30, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 30, 2007, after the hearing, Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether certain of the Judge's factual findings are based upon substantial evidence; and whether the Judge's application of the relevant whole person factors is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following findings of fact: Applicant was charged in 1994 with a felony count of writing a bad check. He entered a plea of guilty to a misdemeanor, receiving a sentence of 60 days confinement, with 55 days suspended. Applicant was ordered to pay restitution, but he did not do so until 2002. In 1995 Applicant was divorced from his wife. The following year she obtained a court order for child support from Applicant. Applicant did not begin paying until his wages were garnished in 2002. He stated at the hearing that he did not know about the child support order until the garnishment action. The Judge concluded that Applicant's testimony on this point was not credible.

The Board concludes that the Judge's findings are based upon substantial record evidence. See Directive ¶ E3.1.32.1; *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21 (1966). Any error in stating that Applicant's child support payments have been made through garnishment since 2002 is harmless, given the totality of the record evidence. Furthermore, we have examined the Judge's whole person analysis and conclude that it is sustainable on the record. To the extent that Applicant's brief contains new evidence, we cannot consider it. See Directive ¶ E3.1.29. See also ISCR Case No. 06-17209 at 2 (App. Bd. Nov. 14, 2007).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed; Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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