

KEYWORD: Guideline F

DIGEST: Applicant was placed on reasonable notice of her right to submit matters in response to the File of Relevant Material. Hearing Office decisions are not binding on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASE NO: 12-04508.a1

DATE: 08/21/2014

DATE: August 21, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-04508
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 21, 2014, 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 June 10, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Rita C. O’Brien denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether Applicant was denied due process and 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 has worked for the same Defense contractor since 1988. She has held a top secret clearance since that time. Applicant's SOR lists six delinquent debts, one for medical treatment and the others for credit cards. She did not provide evidence as to why she had multiple credit card accounts, saying only "Everyone makes mistakes and hardships do happen." Decision at 2. Applicant entered into an agreement with a debt-resolution agency. The agency stipulated that her debts must be at least six months delinquent before they would negotiate with creditors. She stated that, before joining this program, her credit cards were being paid on time." *Id.* Between 2007 and 2010, the agency settled ten accounts, and Applicant settled three others on her own. She stated that her financial situation has improved and that many of her credit card accounts will drop from her credit reports. The Judge listed each SOR debt, concluding that Applicant had demonstrated that one of them was in the process of being resolved through a payment plan. For the remainder, however, the Judge found that Applicant had failed to substantiate her claims of debt resolution.¹

The Judge's Analysis

As noted above, the Judge resolved one debt in Applicant's favor. For the remainder, she concluded that they were ongoing and unpaid. Though noting Applicant's debt resolution program, she stated that the debts settled through that program were not the same ones listed in the SOR. Noting Applicant's belief that a debt that is beyond the statute of limitations has been resolved, the Judge pointed to the long-standing principle that mere non-collectability of a debt does not demonstrate that the debt has been settled.² In the whole-person analysis, the Judge stated that Applicant has held a clearance for many years, which should have put her on notice that delinquent debts can raise security concerns.

Discussion

Applicant notes that she was not represented by counsel when she responded to the File of Relevant Material (FORM) and, therefore, was not aware that she could have provided character references, performance evaluations, etc. However, the FORM advised Applicant that she could provide a documentary response setting forth matters in rebuttal, extenuation, and/or mitigation. Moreover, DOHA mailed the FORM to Applicant accompanied by a letter advising that she could hire counsel and that she could submit "any material you wish the Administrative Judge to consider . . ." Applicant also received a copy of the Directive, which includes her rights to counsel and to

¹The five debts that the Judge resolved against Applicant totaled nearly \$35,000.

²*See, e.g.*, ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011).

submit matters in response to the FORM. Applicant was placed on reasonable notice of her rights. *See, e.g.*, ISCR Case No. 11-11221 at 3 (App. Bd. Aug. 19, 2013). She was not denied the due process afforded by the Directive.

Applicant challenges the Judge’s application of the mitigating conditions and the whole-person factors, focusing particularly on her payment of delinquent debts, including those not alleged in the SOR. The Judge discussed these issues at length in her analysis, and Applicant’s disagreement with the Judge is not sufficient to demonstrate that she erred. *See, e.g.*, ISCR Case No. 12-03074 at 3 (App. Bd. May 16, 2014).

Applicant has submitted Hearing Office cases in support of her appeal arguments. We give them due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearing Office Judge’s or on the Appeal Board. *See, e.g.*, ISCR Case No. 13-00464 at 3 (App. Bd. Feb. 20, 2014). The Judge’s conclusions about the paucity of evidence corroborating Applicant’s claims of debt resolution are consistent with the record that was before her. The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody

Administrative Judge
Member, Appeal Board