

KEYWORD: Guideline F

DIGEST: Applicant was advised of his rights. Pro se Applicants are expected to take reasonable steps to protect their rights. Adverse decision affirmed.

CASENO: 14-00330.a1

DATE: 01/13/2015

DATE: January 13, 2015

In Re:)
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-----) ISCR Case No. 14-00330
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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 February 28, 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 September 19, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Defense contractor. He retired from the U.S. military and holds two advanced degrees. He held a security clearance while in the military. Applicant operated a part-time real estate business, working as a broker for the firm since 2005. Applicant's SOR alleges two delinquent debts, totaling \$28,176. SOR ¶ 1(a) resulted from a default judgment in excess of \$21,000 entered against Applicant's business. A complaint against Applicant personally was dismissed, though the reason for this is not contained in the record. Applicant disputed this debt with the credit reporting agencies. SOR ¶ 1(b) was an unpaid collection account, credit reports listing it as in excess of \$6,000. Applicant's SOR answer stated that this was for a credit card that became delinquent during the decline of the real estate market. Applicant claimed to be making monthly payments of \$50 toward satisfaction of this debt. Applicant provided no proof of payments toward his delinquent debts. Neither did he submit evidence of his work performance, his history with handling sensitive information, or his character.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under Guideline F. He concluded that there was insufficient evidence of a basis for Applicant's dispute of ¶ 1(a), precluding favorable application of Mitigating Condition 20(e). He stated that Applicant's debts are ongoing, significant, and long-standing. He stated that, though Applicant attributed his problems to the collapse of the real estate market, he has failed to demonstrate responsible action in regard to his debts. The Judge noted that Applicant provided no information about his monthly income, expenses, or debt payments. The Judge also concluded that Applicant failed to demonstrate a good-faith effort to pay his debts. In the whole-person analysis, the Judge noted Applicant's military service and clean criminal record. However, he stated that Applicant's financial problem remained a concern, leaving the Judge with doubts about Applicant's suitability for a clearance.

Discussion

Applicant challenges the Judge's finding that he had provided no proof of debt payment. The record contains the explanations Applicant provided in his Answer to the SOR addressing payments on the credit card debt. However, there is no corroborating evidence for these explanations in the form of receipts, cancelled checks, statements from creditors, etc. Moreover,

aside from evidence that the default judgment was entered against Applicant's company rather than against him personally, there is nothing to show that this debt is being resolved. The Judge's material findings of security concern are based upon "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.

Applicant contends that he did not know he had to submit information about his professional performance, etc. He states that had he known such information was required, he could have provided it. We note the Judge's finding that Applicant provided no character evidence. However, we find no reason to conclude that, but for this failure, the Judge would have given Applicant a clearance. In any event, Applicant was advised, in the File of Relevant Material (FORM), in a letter from DOHA administrative personnel accompanying the FORM, and in the Directive, that he was permitted to submit evidence in mitigation, extenuation, rebuttal, etc. Nevertheless, Applicant provided nothing in response to the FORM. In fact, the letter from DOHA stated that Applicant could provide "any material" that he wished. Although *pro se* Applicants are not expected to present their cases as if they were lawyers, they should take reasonable steps to protect their rights. *See, e.g.,* ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 2014). In this case, the information that DOHA provided Applicant was sufficient to apprise a reasonable person of his or her right to submit evidence. We find no reason to believe that Applicant was denied his due process rights. Applicant's brief cites to record evidence, such as his having held a clearance for many years without incident or concern. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence. *See, e.g.,* ISCR Case No. 12-00725 at 3 (App. Bd. (Oct 3, 2014). Applicant's brief refers to matters from outside the record. We are not permitted to consider new evidence on appeal.

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 Judge's 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