

KEYWORD: Guideline F

DIGEST: Applicant received notice sufficient to apprise a reasonable person as to the kind of evidence that might mitigate the concerns arising from his delinquent debts and of his responsibility to provide such evidence. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. Adverse decision affirmed.

CASENO: 14-01702.a1

DATE: 12/23/2015

DATE: December 23, 2015

In Re:)

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Applicant for Security Clearance)

) ISCR Case No. 14-01702
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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 June 16, 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 October 13, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 has worked for a Defense contractor for about 5 years. He stated that his financial problems were due to a drop in income while he was attending school. He also states that he is “making ‘better financial decisions.’” Decision at 3. In 2013, he hired a law firm to assist him in resolving his debts and improving his credit rating. He provided no documentation confirming that the firm had resolved any of his debts. He did not provide a budget setting forth his income, expenses, and discretionary income.

Applicant’s SOR lists a bankruptcy and 11 delinquent debts from between 2007 and 2013. The debts were for a credit card, an automobile repossession, rent, cable services, etc. The Judge found that two debts—the credit card and another debt owed to a bank—had been resolved. She found that the remainder of Applicant’s debts had not been resolved. Despite Applicant’s claims that he had not filed for bankruptcy, the Judge found that he had done so in 2010, based on the contents of a credit report.

In the File of Relevant Material (FORM), Department Counsel stated that the information that Applicant had previously submitted in his Answer to the SOR was not sufficient to mitigate the security concerns in his case. Department Counsel stated that a debt having dropped off a credit report due to age was not proof of debt resolution. Applicant submitted no additional documents in response to the FORM.¹ Applicant stated that he had received credit counseling through the law firm he had hired. He submitted not evidence of his job performance, duties, character, etc.

The Judge’s Analysis

The Judge entered favorable findings for the two debts that she found to have been resolved. For the remainder of the SOR allegations, however, she found adversely to Applicant. She stated

¹Applicant did submit one document, although it was a copy of one that he had previously submitted in his Answer to the SOR.

that Applicant had not provided sufficient documentation to corroborate his claims of debt resolution. She also concluded that Applicant had not shown that his financial problems arose from circumstances outside his control. In the whole-person analysis, the Judge reiterated that Applicant had not provided evidence that would support his contention that a number of his debts had been resolved. She stated that he appears to have relied on the fact that many of his debts have dropped off his credit reports, which she stated was not credible evidence of debt resolution.

Discussion

Applicant's appeal submission includes evidence from outside the record, much of which post-dates the Decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Noting the Judge's statement that he had not provided a documentary response to the FORM, he states that he "did not have a full understanding of the circumstances that would affect my current Security Clearance Level[.]" We construe this as an argument that Applicant was not aware of his rights, thereby impairing his receipt of due process.

As the Judge stated in the Decision, however, Department Counsel put Applicant on notice that the file as it then existed was not enough to mitigate the concerns arising from Applicant's debt problems. Department Counsel also advised Applicant of his right to submit a documentary response to the FORM "setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." FORM at 2. DOHA sent the FORM to Applicant along with a cover letter, dated June 10, 2015, that provided similar guidance. Applicant also received a copy of the Directive, which includes a detailed description of an applicant's right to respond to the FORM. Applicant signed a receipt for the package that included the cover letter, FORM, and Directive.

Applicant received notice sufficient to apprise a reasonable person as to the kind of evidence that might mitigate the concerns arising from his delinquent debts and of his responsibility to provide such evidence. As the Judge noted, however, Applicant did not respond, save for one document that was already in the record. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. Applicant was not denied reasonable notice of his rights and obligations and was not denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 12-02371 at 2-3 (App. Bd. Jun. 30, 2014).

Applicant's brief cites to record evidence concerning, among other things, his having hired a law firm to help resolve this debts. The Judge made findings about this. However, her observation that Applicant had provided no evidence to show what this firm may have done is consistent with the record. Applicant has not rebutted the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 14-06359 at 3 (App. Bd. Nov. 6, 2015).

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