

**KEYWORD:** Guideline F

DIGEST: Applicant correctly notes the Judge erred in stating Applicant pays child support for one child when he in fact paid child support for all three of his children. The Judge aptly described the circumstances that led to the child support arrearage as convoluted. The Judge ultimately found Applicant's child support arrearage arose from conditions beyond Applicant's control and that he had acted responsibly under the circumstances given he "had physical custody of the three children" while paying their expenses and child support at the same time. While the Judge erred in a finding of fact about the number of children Applicant supported, the error did not affect the outcome of the case. We conclude, therefore, this identified error was harmless. Adverse decision affirmed.

CASENO: 17-00464.a1

DATE: 02/12/2019

DATE: February 12, 2019

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In Re: \_\_\_\_\_ )  
----- ) ISCR Case No. 17-00464  
 )  
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 March 29, 2017, 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 hearing. On October 17, 2018, after the hearing, Administrative Judge Philip J. Katauskas 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 and Analysis**

Applicant is a 37 year-old father of three children under the age of eleven. “From 2012 until March 2017, the mother had primary custody of Applicant’s son and the mother’s other two children, which were not Applicant’s children.” Decision at 3- 4. “Applicant pays child support only for his son, not the two other children the mother has from other fathers.” Decision at 4, fn.19. The children’s “mother, pursuant to court order, has had primary custody since February, 22 2018.” Decision at 4. Applicant was given physical custody of the three children at one point. A college graduate, he has been employed by defense contractors since 2014. He has lived with his girlfriend and her three children for almost five years. His girlfriend does not receive child support for her three children. His girlfriend’s oldest child has moved out of the home to attend college. Applicant makes about \$130,000 per year and his girlfriend about makes \$100,000 per year. They divide the household expenses equally. His SOR lists twelve delinquent debts totaling just over \$52,000. Applicant admitted to four debts and provided documentation showing he resolved three debts. He denied the remaining debt SOR allegations. He denied the gambling SOR allegation and disputed his delinquencies were due at least in part to his gambling. Applicant attributed his financial problems to his loss of employment and his child custody situation.

The Judge noted Applicant’s unemployment and convoluted child custody situation led to a substantial child support arrearage that was beyond his control. He stated, that Applicant had favorably addressed nine delinquent debts totaling just over \$11,600, to include his child support arrearage. However, Applicant had not mitigated the remaining four SOR allegations which included three delinquencies totaling almost \$40,000. The Judge noted the roughly \$7,000 to \$8,000 of annual gambling losses could have been more wisely spent reducing some of the SOR debts.

### **Discussion**

Applicant correctly notes the Judge erred in stating Applicant pays child support for one child when he in fact paid child support for all three of his children. The Judge aptly described the circumstances that led to the child support arrearage as convoluted. The Judge ultimately found Applicant’s child support arrearage arose from conditions beyond Applicant’s control and that he had acted responsibly under the circumstances given he “had physical custody of the three children” while paying their expenses and child support at the same time. Decision at 8. The Judge correctly noted Applicant’s testimony that his girlfriend did not receive child support for her three

children, two of whom were still residing with her. Other than that, Applicant does not challenge the Judge's findings of fact. While the Judge erred in a finding of fact about the number of children Applicant supported, the error did not affect the outcome of the case. We conclude, therefore, this identified error was harmless. *See, e.g.*, ISCR Case No.15-04850 at 2 (App. Bd. Jan. 26, 2018). Applicant has not cited to a harmful error in the Judge's decision. *See, e.g.*, ISCR Case No. 16-02640 at 3 (App. Bd. Jul. 2, 2018). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02391 at 4 (App. Bd. Aug. 7, 2018).

Applicant's brief includes an assertion from outside the record pertaining to his exchange with the Judge concerning a debt consolidation and counseling service. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

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 Y. Ra'anana

Michael Y. Ra'anana  
Administrative Judge  
Chairperson, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale  
Administrative Judge  
Member, Appeal Board