

KEYWORD: Guideline F

DIGEST: Applicant’s appeal brief contains documents that are not in the record. In general, we cannot consider new evidence on appeal. However, we will considered such evidence concerning threshold issues of jurisdiction or due process. From our review of this assignment of error, we conclude that Applicant’s assertions in his appeal brief are not sufficient to establish a prima facie showing that he in fact emailed or mailed to DOHA the documents in question. We note that some of those documents pertain to payments that were made after the decision was issued. To the extent that Applicant relies on evidence that was created after the record closed, we cannot consider it. Adverse decision is affirmed.

CASE NO: 19-00108.a1

DATE: 01/09/2020

DATE: January 9, 2020

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In Re:)	
-----)	ISCR Case No. 19-00108
)	
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 18, 2019, 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 September 30, 2019, after the hearing, Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant had 19 delinquent debts totaling over \$67,000. In responding to the SOR, Applicant admitted all of the SOR allegations; however, the Government withdrew an alleged medical debt of approximately \$403. Excluding the withdrawn allegation, the Judge found against Applicant on all of the SOR allegations. Regarding the largest alleged debt, past-due student loans totaling over \$62,000, the Judge noted that Applicant claimed he was making monthly payment of \$416 towards that debt but submitted nothing to support his claim. The Judge concluded that none of the Guideline F mitigating condition were establishing, noting that Applicant has a long history of delinquencies and has done little to address them.

Applicant’s appeal brief raises a due process issue regarding his post-hearing submission. Specifically, he states:

[The Judge] stated that I had not made any efforts to pay any of my debts or show [sic] proof of arrangements made. However, I emailed and sent through the post office, proof of payments made during the 60 day time period from my court date until the closing statement was due. I tried to fax my information to his office and was told they were having technical problems and to email them. I called to confirm that they had received my information and was told that they had. [Appeal Brief at 1.]

In the decision, the Judge noted that he marked Applicant’s post-hearing submission as Applicant’s Exhibit A. This exhibit consists of a three-page rental car agreement and one-page closing statement.

Applicant’s appeal brief contains documents that are not in the record. In general, we cannot consider new evidence on appeal. Directive ¶ E3.1.29. However, we will considered such evidence concerning threshold issues of jurisdiction or due process. *See, e.g.*, ISCR Case No. 14-00812 at 2 (App. Bd. Jul. 8, 2015). From our review of this assignment of error, we conclude that Applicant’s assertions in his appeal brief are not sufficient to establish a *prima facie* showing that he in fact emailed or mailed to DOHA the documents in question. We note that some of those documents pertain to payments that were made after the decision was issued. To the extent that Applicant relies on evidence that was created after the record closed, we cannot consider it. Furthermore, even if Applicant had submitted to DOHA the documents predating the Judge’s decision that did not make into the record, any error in the processing or handling of those documents would have been harmless because it likely would not have affected the outcome of the case. *See, e.g.*, ISCR Case

No. 12-00678 at 2 (App. Bd. Jun. 13, 2014). The documents in question do not show consistent payments towards the alleged debts. For example, those documents show only two student loan debt payments (*i.e.*, a \$225 payment in June 2018 and \$421 payment in July 2019) before the record closed. Such evidence falls short of establishing a track record of payments that would mitigate the security concerns arising from the student loan debt.

In his appeal brief, Applicant also notes that his financial problems arose from his wife's medical expenses, that he has served the Government either in the military or as a contractor for over 40 years, and that he is taking steps to address his debts. His arguments are not enough to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016). Applicant also asserts that keeping his security clearance is imperative to him paying his debts and taking care of other obligations. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

Applicant has failed to establish that the Judge committed any harmful error. 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 Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board