

KEYWORD: Guideline F

DIGEST: Applicant was responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by him or proven by Department Counsel, and he had the ultimate burden of persuasion in obtaining a favorable clearance decision. See Directive ¶ E3.1.15. If Applicant wanted the Judge to consider matters that were not contained in the FORM, it was his obligation to provide that information. Applicant did not submit a response to the FORM and, by failing to do so, he forfeited his right to submit such evidence. He has failed to establish that he was denied the due process afforded him under the Directive. Adverse Decision Affirmed.

CASE NO: 20-01883.a1

DATE: 08/18/2021

DATE: August 18, 2021

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In Re:	)	
	)	
-----	)	ISCR Case No. 20-01883
	)	
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 December 14, 2020, 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 1, 2021, after considering the record, Administrative Judge Robert Robinson Gales 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 he 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 Pertinent Findings of Fact and Analysis**

Applicant, who is in his forties, began serving in his current position sometime after submitting a security clearance application in April 2018. He served on active duty in the military for about six years, including in a combat zone, received an honorable discharge, and continues to serve in the reserves. He has a bachelor’s degree. Married, he has two children. It is unclear whether he was previously granted a security clearance.

The SOR alleged that Applicant had three delinquent debts totaling about \$52,400. Two of those debts were student loans. In responding to the SOR, he admitted the debts had been delinquent but denied they were still in that status. He experienced periods of unemployment before and after his active-duty military service. In his background interview in June 2018, “he characterized his finances as not currently in a good state.” Decision at 3. In responding to interrogatories in March 2020, Applicant completed a Personal Financial Statement that reflected he had a monthly remainder of \$1,720 available for discretionary purposes. Applicant presented documents that established the three debts have been resolved.

Applicant claimed to be so embarrassed by having delinquent accounts that he had not told his wife of their financial situation. He planned to tell her “soon” and intended to seek financial counseling. It is unclear if he did either. Based on the evidence, it appears that Applicant ignored his delinquent accounts for approximately two and one-half years after he was questioned by the OPM investigator. He waited approximately seven months after he was issued a set of interrogatories regarding his delinquent student-loan accounts. Only then, three months before the SOR was issued, did he take action to resolve the delinquent accounts, basically at a substantial discount. An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. . . . Applicant’s delayed actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. [Decision at 7 and 8, citations omitted.]

## Discussion

In his appeal brief, Applicant contends the Judge's decision was not based on current information. He asserts it was based solely on his 2018 background interview and did not take into consideration his December 2020 interview in which he provided updated information regarding how the accounts were resolved and who had knowledge of his financial problems. He stated he could not provide a copy of that interview because he did not have one. We note the month in which this second interview purportedly occurred is the same month the SOR was issued and Applicant answered it by providing documents the Judge relied upon to conclude the alleged debts were resolved.

To the extent that Applicant is contending he was denied due process because the Judge did not consider the purported second interview, we do not find that argument persuasive. On February 5, 2021, Department Counsel's File of Relevant Material (FORM) was mailed to Applicant. He acknowledged receipt of the FORM on February 12, 2021, and was given 30 days from its receipt to file objections or submit additional matters for the Judge to consider. The FORM contained seven exhibits that represented the Government's evidence. The FORM advised him that, if he did not file objections or submit additional matters, his case would be assigned to a Judge "for a determination based **solely** on this FORM." FORM at 4 (emphasis added). The cover letter forwarding the FORM contained the same information. Applicant was responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by him or proven by Department Counsel, and he had the ultimate burden of persuasion in obtaining a favorable clearance decision. *See* Directive ¶ E3.1.15. If Applicant wanted the Judge to consider matters that were not contained in the FORM, it was his obligation to provide that information. Applicant did not submit a response to the FORM and, by failing to do so, he forfeited his right to submit such evidence. He has failed to establish that he was denied the due process afforded him under the Directive.

Applicant's appeal brief includes other assertions about the debts and his efforts to resolve them that are not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

The remainder of Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence. In arguing that the Judge's decision is wrong, for example, he points out that he has not had any other financial problems and his current financial situation is good. None of his arguments, however, are enough to rebut the presumption that the Judge considered all of the evidence in the record or sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

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