



**DEPARTMENT OF DEFENSE**  
**DEFENSE LEGAL SERVICES AGENCY**  
**DEFENSE OFFICE OF HEARINGS AND APPEALS**  
**APPEAL BOARD**  
**POST OFFICE BOX 3656**  
**ARLINGTON, VIRGINIA 22203**  
**(703) 696-4759**

Date: June 17, 2024

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In the matter of:	)	
	)	
-----	)	ISCR Case No. 23-01339
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 7, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant elected a decision based on the written record. On April 17, 2024, Defense Office of Hearings and Appeals Administrative Judge Carol G. Ricciardello denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline F, the SOR alleged three delinquent consumer debts. Under Guideline B, the SOR alleged that numerous family members are residents and/or citizens of the Democratic Republic of the Congo. In Applicant’s answer to the SOR, he admitted one delinquent debt, denied the other two, and admitted all of the Guideline B allegations. The Judge found for Applicant on the two debts that he denied and against Applicant on the one remaining debt and on all Guideline B allegations.

In her decision, the Judge noted that Department Counsel submitted the Government's file of relevant information (FORM) to Applicant, that he acknowledged receipt on February 2, 2024, and that "Applicant did not provide a response to the FORM; did not object to the Government's evidence; and did not submit documents." Decision at 2.

On appeal, Applicant asserts that the Judge erred in this regard, as he did submit additional information via email in response to the FORM. Through counsel, Applicant represents that he submitted information about one of the Guideline F debts and two of the Guideline B concerns to "a DOHA agent working with him on the case," and that the DOHA employee failed to forward the exhibits and evidence for consideration. Appeal Brief at 6. Applicant explains that he is unable to produce these emails because he no longer has access to his work email account after losing his job, but he does not provide any further details about his submissions or a copy of what was purportedly emailed.

The record confirms that Applicant received a copy of the FORM on February 2, 2024, that the FORM itself and the accompanying cover letter advised Applicant regarding his right to respond, and that DOHA received no response prior to submitting the FORM to the Judge. In its reply brief, the Government asserts "that no telephone voice messages or any other communications from Applicant were received by any Department Counsel staff following Applicant's receipt of the FORM." Reply Brief at 5. Having conducted "a good-faith search," the Government represents that "the last known email Department Counsel staff received from Applicant was a February 5, 2024 email in which he transmitted his signed receipt of the FORM." *Id.* Applicant's bare assertion that he emailed a response is insufficient to establish a *prima facie* showing that he actually submitted additional information or documents that were not included in the record. Applicant has not established that he was denied the due process afforded by the Directive.

The remainder of Applicant's brief amounts to a disagreement with the Judge's weighing of the evidence. None of his arguments, however, are sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. "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* AG ¶ 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: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board

Signed: James B. Norman

James B. Norman  
Administrative Judge  
Member, Appeal Board