

KEYWORD: Guideline F

DIGEST: The Judge’s material findings are based on substantial record evidence.

CASENO: 14-01960.a1

DATE: 07/02/2015

DATE: July 2, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-01960
)	
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 July 24, 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 April 17, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 since May 2012. A high school graduate, he has taken technical classes but has not received a degree. His SOR alleges several delinquent debts totaling about \$16,000. He failed to file Federal and state income taxes for tax years 2010 and 2011. His problems began in the 1990s and include a bankruptcy. He states that he did not file his income taxes because he and his wife had separated. He stated that he would be hiring lawyers to help him in filing his tax returns and that he had hired a law firm to assist him with his other debts.

Applicant candidly admits that his problems are due to his inability to manage his finances. He also claimed that he had stopped paying on student loans because the school he attended had been closed for fraud.

Applicant submitted evidence that he filed his Federal tax returns for 2010 and 2011, but correspondence from the IRS shows that they were incomplete and required additional documentation. There is no evidence in the record that the issue has been resolved. He has still not filed his state tax returns. Although he said that he would hire someone to assist with this, there is no explanation in the record as to why it hasn't occurred.

A January 2015 credit report shows that delinquent student loans are not current. His gross annual salary is about \$126,000, and there is information in the record that Applicant has received financial counseling.

The Judge's Analysis

In concluding that Applicant had not mitigated his security concerns, the Judge cited to the ongoing nature of unpaid debts as well as to evidence that Applicant's problems were not caused by circumstances outside his control. Rather, she noted his admission that his difficulties were caused by his own inability to handle his finances. She stated that there is no clear evidence that his problems are under control or being resolved. In the whole-person analysis, the Judge noted that Applicant has tried to educate himself by taking technical courses and that he has rehabilitated his delinquent student loans. However, looking at his circumstances as a whole, she concluded that he had not demonstrated a track record of debt payment.

Discussion

Applicant cites to evidence that he had filed his tax returns prior to the close of the record and that he had hired a law firm to help with resolving his debts. He also provides some context for record evidence about the circumstances underlying his tax problems. In doing so, he refers to matters from outside the record, some of which post-date the Judge's decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. We have examined Applicant's argument in light of the record and conclude that the Judge's material findings are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Moreover, Applicant has not rebutted the presumption that the Judge considered all of the evidence. Neither 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. 10-00898 at 2 (App. Bd. Mar. 25, 2011).

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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