

KEYWORD: Guideline F; Guideline C; Guideline B; Guideline E

DIGEST: The Appeal Board cannot consider new evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decisions affirmed.

CASE NO: 14-02411.a1

DATE: 06/01/2015

DATE: June 1, 2015

In Re:	)	
	)	
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	)	
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 14, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations), Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 17, 2015, after the hearing, Defense Office of Hearings and Appeals

(DOHA) Administrative Judge Claude R. Heiny denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.<sup>1</sup>

Applicant raises the following issues on appeal: whether the Judge's adverse decision is arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following findings: Applicant has a history of financial problems. He and his wife had five houses that went into foreclosure. He owed the IRS approximately \$35,000 and the state \$20,000 for delinquent taxes. He owes \$134,000 for unpaid second mortgages and \$4,000 on a delinquent collection account. Applicant owes approximately \$60,000 in student loans, which are currently in deferment status. He is paying, has paid, or had the debt forgiven on approximately \$575,000 of his delinquent SOR debt. Five delinquent debts, totaling approximately \$150,000 have yet to be addressed.

The Judge concluded: Applicant submitted proof that he made an \$800 payment to the state taxing authority, but this is insufficient to show an agreement has been reached concerning the full \$20,000 amount he owes to the state. Applicant still owes the second mortgage on two properties. He would like to work out a repayment agreement with the holder of the mortgage, but they are unwilling to lessen their demand for full payment. His financial problems occurred more than five years ago, but some of the delinquent debt remains unpaid. He is currently separated with his wife seeking divorce. This is a factor beyond his control, but his financial problems started before he separated from his wife. His efforts at repayment are insufficient to establish a good-faith effort to repay his debts. The record evidence raises questions and doubts about Applicant's eligibility and suitability for a security clearance. He has not mitigated the security concerns arising from his financial difficulties.

Applicant states that he disagrees with the Judge's ultimate findings under Guideline F and he lists efforts on his part to address his overdue debt. He states that he has learned from his financial struggles, that he takes full responsibility for his debts and is committed to satisfying them. The Board construes Applicant's assertions as an argument that he has mitigated the government's concerns.

Applicant's representations regarding his recent efforts to address his debts constitute additional evidence that goes beyond the record evidence in the case. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

Given the extent and the ongoing nature of Applicant's debts, the Board concludes that the Judge's decision is supported by the record. Applicant has not rebutted the presumption that the Judge considered all the evidence in the record or that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 08-06438 at 2 (App. Bd. Aug. 4, 2009).

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<sup>1</sup>The Judge found in Applicant's favor under Guidelines C, B, and E. Those favorable formal findings are not at issue on appeal.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). “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). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

**Order**

The decision of the Judge is AFFIRMED.

Signed: Michael Ra’anan  
Michael Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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