

KEYWORD: Guideline F

DIGEST: The Judge’s material findings were supported by substantial evidence. the Appeal Board cannot consider new evidence on appeal. Applicant did not rebut the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 14-02619.a1

DATE: 04/07/2016

DATE: April 7, 2016

In Re:	)	
	)	
-----	)	ISCR Case No. 14-02619
	)	
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 November 7, 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 hearing. On January 14, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr., 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 the Judge's findings of fact contained errors and 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 been employed by a Defense contractor since 2013. He served in the military, retiring as an E-7. Applicant's wife resigned from Government employment and currently works in a job that pays her on commission. She makes between \$80,000 and \$120,000 a year.

In 2009, Applicant received an SOR that alleged \$66,000 in delinquent debt, including a tax debt to the IRS. Applicant presented his case to a DOHA hearing and received a favorable clearance decision. Some of the findings in the case before us are based upon those in the 2009 decision.

Of the seven debts contained in the 2009 SOR, Applicant paid three and entered into payment plans for three others. Two of the debts were to the same creditor and were combined. The IRS garnished Applicant's wages. He entered into a payment agreement, but he missed some of the monthly payments. Another debt was a Home Equity Line of Credit (HELOC)/credit card. Applicant entered into an agreement to pay this debt over a course of time, with a balloon payment at the end. Applicant was not able to make these payments. The Judge in the prior case made conclusions that turned out to have been overly optimistic regarding Applicant's financial condition.

Applicant's current SOR contains eight delinquent debts, all but two of which occurred after the 2009 hearing. Applicant states that he has experienced financial hardship over the last several years, including expenses associated with caring for elderly parents and providing for his son. Applicant enjoys a good reputation for honesty and trustworthiness. He has about \$655 each month after expenses and has set aside about \$4,000 to pay debts. He promised to pay off his debts but acknowledged that he had made similar promises in the past without following through.

### **The Judge's Analysis**

The Judge concluded that Applicant had led the previous Judge to overestimate his financial health. He stated that, after the earlier favorable decision, Applicant did not resolve all of his problems and in fact acquired new ones. He also concluded that none of the mitigating conditions applied. He stated that Applicant had not shown responsible action in regard to his debts, insofar as they have "lingered for many years with incomplete resolution or inconsistent efforts toward resolution." Decision at 6. He reiterated his finding that Applicant had made promises in the past to resolve debts yet failed to act upon them in a meaningful way.

### **Discussion**

Applicant challenges some of the Judge's findings of fact. He contends that the loan in question was not a HELOC but a personal loan. He also asserts that the Judge erred concerning his IRS debt and denies that all of the debts in his current SOR are new. We have considered the totality

of Applicant’s challenge to the Judge’s findings. We conclude that the findings are based upon “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. Applicant has not demonstrated the Judge committed any error that affected the overall disposition of the case. The Judge’s material findings are sustainable. Applicant’s brief refers to matters from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant notes that without a clearance he may not have a job. The Directive 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’s citations to favorable evidence, such as his having become current on his mortgage, the expenses associated with caring for his parents, and losses in his and his wife’s pay are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they sufficient to undermine the Judge’s weighing of the evidence. *See, e.g.*, ISCR Case No. 14-04202, *supra*, at 3. Applicant strenuously denies that he intentionally misled the Judge in the earlier case. However, the Judge in the case before us did not find that Applicant had deceived the earlier Judge, only that his presentation in the 2009 case had overstated his financial health. We find no error in the challenged comment.

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

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