

KEYWORD: Guideline F

DIGEST: We cannot consider new evidence on appeal. Adverse decision affirmed.

CASENO: 14-03228.a1

DATE: 07/27/2016

DATE: July 27, 2016

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 14-03228
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**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 January 20, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline G

(Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 27, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He served in the U.S. Navy from 2002 to 2010. He is unmarried and has one child. The SOR alleged six overdue debts totaling about \$27,000 and two alcohol-related arrests.

Applicant submitted a Lien Release Notice showing a tax lien for about \$1,050 was filed in error. The Judge found that Applicant did not submit evidence showing any of the remaining debts had been resolved or reduced. Applicant wrote that he encountered financial difficulty in transitioning from the Navy to civilian life. He offered no evidence that his current financial situation would enable him to resolve his overdue debts or stay current with his present debts.

In 2007, Applicant was arrested and charged with driving under the influence of alcohol (DUI). He was found guilty of reckless driving and sentenced to a fine and suspension of his driver's license for one year. In 2014, he was arrested and charged with DUI and related driving offenses. The trial was scheduled for a month after the SOR was issued. In his Response to the SOR, Applicant admitted both allegations under the alcohol consumption guideline and stated that he typically does not drink and, because of significant weight loss, did not realize that he exceeded the alcohol limit during the latest incident. He indicated this was a horrible mistake that will never happen again. In his Response to Department Counsel's File of Relevant Material (FORM), he submitted no evidence concerning the disposition of the latest charges.

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

The Judge found in favor of Applicant on the tax lien and against him on the remaining debts. For those remaining debts, the Judge concluded that no evidence was submitted to establish that Applicant has acted responsibly in attempting to resolve or reduce them. The Judge also concluded that none of the mitigating conditions under the alcohol consumption guideline applied, noting the recency of the 2014 charges and the lack of evidence about the disposition of those charges.

### **Discussion**

Much of Applicant's appeal brief asserts matters from outside the record, including documents that post-date the Judge's decision. We cannot consider new evidence on appeal.

Directive ¶ E3.1.29. Applicant cites to his efforts at addressing his debts and notes he was previously unable to provide information about the disposition of his latest charges and his completion of an alcohol awareness program. However, Applicant has not undermined the Judge’s finding about the lack of evidence in the record concerning such matters. Applicant’s arguments essentially amount to a disagreement with the Judge’s weighing of the evidence. Those arguments, however, are not enough to show the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to the law. *See, e.g.*, ISCR Case No. 14-04719 at 3 (App. Bd. Apr. 6, 2016).

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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board