

KEYWORD: Guideline F

DIGEST: There is no basis in the record to support a finding that Applicant submitted evidence that did not make it into the record. Applicant failed to rebut the presumption that the Judge considered all of the evidence. The Judge’s findings are supported by substantial evidence. Adverse decision affirmed.

CASE NO: 14-05486.a1

DATE: 03/28/2016

DATE: March 28, 2016

)	
In Re:)	
)	
-----)	ISCR Case No. 14-05486
)	
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 May 28, 2015, 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 LeRoy F. Foreman 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 failed to consider all of the evidence, whether the Judge's findings 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 is an employee of a Defense contractor, for whom he has worked since 2008. He served in the U.S. military from 1970 to 1972 and has held a clearance since 2005. Applicant has been consistently employed since 2000, though he has experienced frequent job changes, "sometimes under unfavorable conditions." Decision at 2.

Applicant's SOR alleged three debts, two of which the Judge resolved in Applicant's favor. These debts are not at issue in this appeal. The debt that the Judge resolved adversely to Applicant resulted from a credit card account. Applicant and his wife had used the card to pay expenses associated with a restaurant the couple owned. This debt was eventually charged off. During a clearance interview conducted in 2010, Applicant stated that this debt had been included in a consolidation plan that was being paid each month. However, his credit reports show that the debt is not resolved. At the hearing Applicant acknowledged that he should have paid it but that he relied on his wife to handle the finances. He testified that he had contacted the creditor but had made no arrangements to pay.

Applicant earns about \$105,000 a year. He has additional rental income from various sources, leaving him a net monthly remainder of about \$4,300. His wife controls the spending, and he is not able to account for his money. Applicant's wife has had cancer since 2010, and she also suffers from depression. A colleague testified that he has never known Applicant to be deficient in judgment, self-control, or willingness to abide by rules and regulations.

The Judge's Analysis

The Judge noted evidence of financial problems and poor business decisions that were not alleged in the SOR. He stated that he was considering this evidence for the permitted purposes set forth in ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006): to assess credibility; to evaluate evidence in mitigation; to evaluate claims of rehabilitation; and to perform a whole-person analysis. The Judge concluded that Applicant had not mitigated the concerns arising from his delinquent credit card. He noted that Applicant had been aware of this debt at least since 2010 and, despite a promise to pay it off, had failed to take appropriate action. Moreover, he was placed on notice by the SOR that the debt was still outstanding but took no steps to resolve it despite a substantial monthly net income.

The Judge also stated that Applicant had presented no evidence of financial counseling, nor had he made a good-faith effort to pay off the credit-card. The Judge acknowledged that his adverse decision rested upon this one debt. He stated that, given evidence of Applicant's history of financial problems, his disengagement from the family finances, and his "inexplicable failure to take

meaningful steps to resolve the credit-card debt,” the case raised “serious doubts” about Applicant’s eligibility for a clearance. Decision at 9.

Discussion

Applicant states that his payment plan was not entered into the record.¹ We construe this as an argument that he was denied an opportunity to present evidence in mitigation. We note that at the beginning of the hearing, Applicant submitted numerous documents, Applicant Exhibits (AE) A through G, all of which were admitted into evidence and are preserved in the record. Tr. at 29. Later on Applicant submitted another document, AE H, which was admitted without objection. Tr. at 58. At the end of the hearing, Applicant advised that he had no further evidence. Tr. at 125. *Sua sponte*, the Judge held the record open for two weeks in order to give Applicant an opportunity to present additional evidence pertaining to the two allegations that the Judge ultimately resolved in Applicant’s favor. Tr. at 126. Applicant submitted nothing, however. Decision at 2. There is nothing to show or reasonably to imply that Applicant attempted to present any other evidence that was not included in the record and that was relevant to the one credit-card debt at issue in this appeal. Neither the record nor Applicant’s brief provide a reason to believe that he was denied an opportunity to present evidence or that he was denied any other right secured him by the Directive. *See, e.g.*, ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015). Beyond a due process challenge, we are not able to discern in what way Applicant believes that the purported absence of a payment plan constitutes an error by the Judge or by other DOHA officials. Accordingly, this argument fails for lack of specificity. *See, e.g.*, ISCR Case No. 14-05920 at 3 (App. Bd. Jan. 8, 2016).

Applicant contends that there is an error in the Judge’s finding about his proposed payment schedule for the credit card debt. The findings about Applicant’s payment efforts are based upon his answer to the SOR and his hearing testimony. We find no error in the findings, which are founded upon substantial record evidence.² *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant argues that the Judge did not consider all of the evidence in the record. His argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record or to show that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). Applicant argues that unless he maintains his clearance he will not be

¹Applicant’s brief cites to three payment plans, one of which apparently pertains to the credit card debt. He states that these plans are enclosed, although there are no attachments included with the brief. In light of the discussion above, these documents, even if they had been submitted along with the brief, would have constituted new evidence, which we are not permitted to consider. Directive ¶ E3.1.29.

²We note the Judge’s finding that Applicant had made no arrangements to pay this debt. Applicant testified that he was going to sign a payment plan with the creditor during the month following the hearing. Tr. at 110. *See* Note 1, *supra*. The Judge’s failure to have entered findings based on this uncorroborated testimony was not erroneous. A Judge cannot reasonably be expected to make detailed findings based on every piece of evidence and testimony in the record. Even if we were to assume that he should have acknowledged Applicant’s statement of intent to sign a payment plan, it was at worst harmless error, in that it did not likely affect the outcome of the case.

able to resolve his remaining debt. The Directive does not permit us to consider the impact that an unfavorable decision might have upon an applicant. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015).

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