

KEYWORD: Guideline F

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

CASENO: 15-00949.a1

DATE: 07/06/2016

DATE: July 6, 2016

In Re:	)	
	)	
-----,	)	ISCR Case No. 15-00949
	)	
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 August 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 decision on the written record. On April 14, 2016, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 and whether the decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

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

Applicant enlisted in the U.S. Air Force in 1983, served 21 years of active duty, and was honorably discharged in 2004. Applicant has been employed by his current employer since 2004. During the period 2005 through 2014 Applicant accumulated delinquent debts including a \$19,000 debt to the IRS for past due federal taxes, three judgments against him exceeding \$31,000, and 13 consumer debts exceeding \$22,000. Applicant estimates his current balance on the federal taxes he owes to be \$12,230, but provides no documentation to corroborate his claim. Applicant claims that two of the three judgments were satisfied by wage garnishment and that the third judgment was partially satisfied by voluntary monthly payments. However, he offers no documentation to support the satisfaction of these judgments. Applicant provided no evidence to verify any of his claimed payments made to the 13 consumer debts. Applicant attributed many of his financial problems to legal gambling during the period 2005 to 2014. Before curtailing his gambling in 2014, Applicant estimated that he gambled four days per week. Applicant incurred an estimated \$75,000 in gambling losses, lost his home due to gambling, and unsuccessfully attended Gamblers Anonymous. Applicant continues to gamble on occasion. Applicant did not offer any character references on his behalf, nor did he provide any performance evaluations or evidence of community and civic contributions. Applicant did not respond to the File of Relevant Material (FORM) submitted by the Government in this case.

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

Applicants' delinquent debts are attributable in most part to gambling. While Applicant's gambling likely contributed to his financial situation, gambling losses cannot be considered extenuating when evaluating an applicant's clearance worthiness. Applicant has not provided any evidence of resolution of his delinquent debts. Therefore, more time is needed to make conclusions that Applicant's financial situation is sufficiently stabilized to permit his access to classified information.

### **Discussion**

In his appeal, Applicant states that he believes he has approximately \$55,000 to \$60,000 less debt than what was set forth in the SOR. He states that he is submitting updated responses to the SOR. He also includes bank statements he contends show payments of his debts and screen shot print-outs from the county court reflecting payment and satisfaction of the judgments against him.

He also includes his performance reports dating back to 2012. He requests that the Board consider the fact that he has held a security clearance since 1983 without any security incidents and that he served his country honorably for over 21 years in the Air Force.

The Judge did consider Applicant's work history including his honorable service in the military. As to the updated information Applicant is now providing in response to the SOR, and other evidence not contained in the record below, we note that Applicant was given multiple opportunities to provide such documentary support during the security clearance process. The Directive does not specify the quantum of evidence that applicants should provide, although, in adjudications on the written record, it affords them with an opportunity to submit any and all documentary evidence they believe would assist in presenting their cases. In this case, Applicant was advised of his right to submit evidence, by means of the FORM, the DOHA cover letter that accompanied it, and the copy of the Directive that DOHA sent him. *See, e.g.*, DOHA Cover Letter, dated December 30, 2015. However, Applicant did not respond to the FORM. In addition, Applicant did not provide documentation to support his claims and assertions made in his Answer to the SOR. Further, as early as May 20, 2014, the Government advised the Applicant that additional information was needed from him to determine his eligibility for a security clearance by propounding interrogatories requesting detailed information about the status of his delinquencies. Although Applicant responded to the interrogatories, he did not submit any supporting documentation reflecting payment or resolution of the debts. Applicant's appeal brief contains assertions and attachments that were not part of the record below. The Board may not consider such new evidence on appeal. *See* Directive ¶ E3.1.29.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of 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: Catherine M. Engstrom  
Catherine M. Engstrom  
Administrative Judge  
Member, Appeal Board