

KEYWORD: Guideline F

DIGEST: We have, in the past, remanded cases to the appropriate judges for consideration of documents that applicants had submitted but which were not incorporated into the record. However, in this case there is nothing in the record to corroborate Applicant's claim that he actually submitted this documentation, such as postal receipts, USPS tracking documents, *etc.* Also, Applicant does not attach the cited documents to his appeal brief, nor does Applicant state when he submitted this documentation or during what stage of the security clearance process he provided it to the Government. Accordingly, we find no reason to remand the case. Adverse decision affirmed.

CASENO: 15-02156.a1

DATE: 06/24/2016

DATE: June 24, 2016

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In Re:	)	
	)	
-----	)	ISCR Case No. 15-02156
	)	
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 September 30, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns were raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). The case was decided on the written record. On March 31, 2016, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard denied Applicant's request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether there are grounds for ordering a remand to allow the Judge to consider documents Applicant claims he submitted. Consistent with the following, we affirm.

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

Applicant did not respond to the File of Relevant Material (FORM) submitted by the Government within the 30-day period from receipt of the FORM. Applicant has been continuously employed as an engineer for the last 25 years. His employment history also includes honorable service with the U.S. Army during the period 1980 through 1990. He has been married and divorced three times with his most recent divorce occurring in 2012. Applicant disclosed a history of financial problems in his October 2012 security clearance application. Specifically, Applicant reported a failure to file federal income tax returns for tax years 2007, 2008 and 2009, due to a delay associated with his then spouse's business. Applicant stated that the returns were filed in 2010. Applicant also reported six other delinquent accounts. The SOR alleged and the record shows that Applicant has other numerous delinquent debts as established by credit reports obtained during the security clearance process in 2012 and 2015. Although some alleged debts were resolved in Applicant's favor, Applicant has not demonstrated that he had resolved the remaining delinquent accounts set forth in the SOR. Applicant made claims in his answer to the SOR that are not supported by documentation.

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

Applicant's financial history was problematic. Other than the satisfaction of the judgment, Applicant has done very little to address his financial problems dating back to at least 2012. Applicant has not provided sufficient information to mitigate the concerns raised by his delinquent debts. Although Applicant receives some credit for taking care of the judgment in 2010, the credit is limited because the judgment was satisfied by wage garnishment, which is not truly voluntary. Applicant has not shown a reasonable plan to resolve the delinquent debts and has not demonstrated a firm commitment to adhering to that plan.

### **Discussion**

Applicant contends that either information he submitted was not provided to the Judge, or the Judge did not consider all the evidence. Applicant states that this documentation includes his financial statement explaining the reasons for his financial situation; his divorce decree which he asserts reflects his former spouse's responsibility for the debts set forth in the SOR; receipts of payments he made toward his former spouse's unpaid bills; a list of fraudulent activity committed by his former spouse; and a personal profile letter highlighting his 36 years of employment which includes 10 years of honorable service in the U.S. Army.

We have, in the past, remanded cases to the appropriate judges for consideration of documents that applicants had submitted but which were not incorporated into the record. However, in this case there is nothing in the record to corroborate Applicant's claim that he actually submitted this documentation, such as postal receipts, USPS tracking documents, *etc.* Also, Applicant does not attach the cited documents to his appeal brief, nor does Applicant state when he submitted this documentation or during what stage of the security clearance process he provided it to the Government. Accordingly, we find no reason to remand the case. *See, e.g.*, ISCR 11-06839 at 2 (App. Bd. Apr. 30, 2013) (citing ISCR Case No. 10-09433 at 2 (App. Bd. Jul. 2, 2012)). To the extent that Applicant comments on evidence not in the written record, we cannot consider it. *See* Directive ¶ E3.1.29.

There is a presumption that the Judge considered the entire record, and Applicant has not demonstrated that he did not do so. The Judge did examine the written record which contains Applicant's security clearance application, the SOR, Applicant's Answer to the SOR, and two credit reports. We do note that the Judge did discuss Applicant's military service and employment history. The Judge noted the lack of any supporting documentation submitted by Applicant to support his claims and assertions made in his answer to the SOR. The Judge's adverse decision is based in large part on his findings concerning the insufficiency of the evidence to establish any of the mitigating conditions for the remaining allegations. In a DOHA proceeding, once the Government establishes security concerns, the applicant bears the burden of presenting evidence in mitigation or extenuation, according to the criteria set forth in the Directive. In this case, Applicant did not reply to the FORM, thereby passing up the opportunity to present evidence that might establish one or more of the mitigating conditions found under Guideline F. *See, e.g.*, ISCR Case No. 11-00771 at 2 (App. Bd. Apr. 9, 2012). The Judge had substantial record evidence to support his material findings of security concern. In this regard, the Judge found in favor of the Applicant for 11 of the SOR allegations (SOR allegations 1.e through 1.k, 1.m, 1.q, 1.r, and 1.v). In his answer to the SOR, Applicant attributed several of these medical debts to his former spouse. Also, Applicant admitted to two of the debts alleged in the SOR without any explanation. Those two debts totaled over \$23,000 (SOR allegations 1.b and 1.p). Thus, even if the Judge erred, it was harmless. *See, e.g.*, ISCR Case No. 14-03574 at 2 (App. Bd. Sept. 2, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The Judge's adverse 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 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