

KEYWORD: Guideline F

DIGEST: Applicant has six delinquent debt and offered no evidence that these debts had been paid, although she has \$200,00 in her retirement account. Adverse decision affirmed.

CASENO: 07-04192.a1

DATE: 04/24/2008

DATE: April 24, 2008

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| In Re: )                           |                        |
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| ----- )                            | ISCR Case No. 07-04192 |
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| Applicant for Security Clearance ) |                        |
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

James J. McKee, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 26, 2007, DOHA 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 17, 2008, after the hearing, Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether the Judge’s adverse security clearance decision is supported by substantial record evidence; whether the Board should take official notice of certain documents submitted for the first time on appeal; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made sustainable findings that Applicant had six delinquent debts, totaling \$19,691. The record contained no evidence that these debts had been paid. Applicant admitted each of these debts in her answer to the SOR, though for two of them, one for \$8,948 and another for \$4,035, Applicant stated she did not remember the debts. She had experienced some unemployment from February 2001 until November 2002. She has approximately \$5,000 in a savings account and about \$200,000 in a 401(k).

The Board has examined Applicant’s allegations of error in light of the entire record. We conclude that the Judge’s material findings of security concern are based upon substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.”) Applicant has requested that the Board to take official notice of certain documents. These documents constitute new evidence, which the Board cannot consider. Directive ¶ E3.1.29. *See also* ISCR Case No. 06-22871 at 2 (App. Bd. Jan. 24, 2008). In any event, the matters which Applicant has submitted do not constitute newly discovered evidence. Rather, they are documents that were readily discoverable through the exercise of due diligence prior to the close of record. *See* ISCR Case No. 06-22581 at 2 (App. Bd. Nov. 2, 2007). *See also* *Girault v. U.S.*, 135 F. Supp. 521, 524 (U.S. Ct. of Cl. 1956). In view of the fact that Applicant has \$200,000 in her retirement account and nevertheless has not paid off her remaining delinquent debt, the Board concludes that there is little chance that, had the documents in question been provided to the Judge, he would have issued a different decision.

Viewed in the light of the record as a whole, the Judge’s decision articulates “a satisfactory explanation for [his] conclusions, including a rational connection between the facts found” and his adverse decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). The record supports the Judge’s conclusion that Applicant has not met her burden of persuasion that it is “clearly consistent with national security” for her to have a clearance. Decision at 7. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Accordingly, the Board concludes that the Judge’s decision is not arbitrary, capricious, or contrary to law.

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, 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