

KEYWORD: Guideline F

DIGEST: The Appeal Board does not presume error below. The appealing party must raise an issue of harmful error. Applicants are expected to take reasonable steps to preserve their rights. Applicant misplaced clearance paperwork. However, he could have acquired contact information for DOHA through the exercise of reasonable diligence in an effort to secure an extension or replacement documents. Adverse decision affirmed.

CASE NO: 12-07948.a1

DATE: 07/03/2013

DATE: July 3, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-07948
)	
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 10, 2012, 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 that the case be decided on the written record. On April 16, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White 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 issues on appeal: (1) whether Applicant should be allowed to submit evidence supporting his case; and (2) whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found that Applicant accrued substantial delinquent debts over the past five years. The total due on Applicant's delinquent debts alleged in the SOR, and supported by entries in the record credit bureau reports, was \$65,330. Applicant also defaulted on mortgage loans for two homes, beginning in 2008. Applicant and his wife had refinanced the mortgage on one of the homes several times over the years, withdrawing equity to supplement their income. Applicant submitted no evidence of financial counseling. The Judge concluded that Applicant had made little progress toward resolution of the major mortgage debts, and offered no evidence of an effective plan to resolve these debts or of plans for changes to prevent continued financial irresponsibility. The security concerns arising from Applicant's debts were not mitigated.

Applicant's brief is accompanied by a large volume of material that is not part of the record below and therefore constitutes new evidence. The Board cannot consider new evidence in the process of deciding appeals. Directive ¶ E3.1.29. Applicant admits he failed to meet the filing deadline for the submission of materials in response to the government's File of Relevant Material (FORM). The Board will consider this issue in the context of considering whether there are sufficient grounds for remanding the case to the Judge for consideration of documents that Applicant did not timely submit in response to the FORM.

Applicant states that he was in the process of moving out of his house when he received the DOHA package containing the FORM. In the hustle and confusion of hectic packing the DOHA package with the FORM, which contained all contact information, was accidentally packed with Applicant's household effects. Applicant was given 30 days after receipt to respond to the FORM. In DOHA proceedings, parties are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 08-12061 at 2 (App. Bd. Dec. 15, 2009). Here, Applicant indicates that the contact information for DOHA was mislaid along with the rest of the FORM. While the loss of written contact information would be a hindrance, the Board concludes that Applicant could have ascertained the necessary information to contact DOHA through the exercise of reasonable diligence. He submitted a detailed response to the SOR on August 31, 2012 with multiple page references to DOHA. The cover letter was addressed to DOHA. Thus, DOHA was not an entity with which he was unfamiliar. Applicant later received his copy of the FORM through his facility security officer, who had him sign a receipt for the FORM. The facility security officer was available to assist Applicant in obtaining the necessary contact information for DOHA. There is no evidence that Applicant took advantage of this source. After considering the representations of Applicant on this issue, the Board concludes that there is no justification for granting Applicant's request to expand the record through a late submission of materials in response to the FORM.

Applicant states at the outset of his brief that he is not assigning any fault or blame to the Judge, because the Judge decided the case based upon the information he had available at the time.

However, Applicant's appeal brief also contains a lengthy section entitled "Summary and Rebuttals" where he takes issue with some of the findings of fact and the analysis of the Judge. He argues that his finances deteriorated because of his ongoing serious health problems and his wife's loss of her job, factors he believes mitigate the case against him. Thus, reading the brief as a whole, the Board concludes that Applicant is asserting error. The problem is, in so doing, Applicant is relying on matters outside the record, which he acknowledges the Judge cannot be held accountable for. There is no presumption of error below. There is also a presumption in favor of regularity and good faith on the part of DOHA Judges as they engage in the process of deciding cases. *See, e.g.*, ISCR Case No. 99-0019 at 5 (App. Bd. Nov. 22, 1999). Applicant is unable to rebut these presumptions.

The gravamen of the Judge's decision is the fact that Applicant has not made significant progress in repaying his outstanding delinquent debts, has not demonstrated the capacity to avoid additional delinquent debt, and his debt predicament is largely the result of voluntary choices. These conclusions are sustainable. The Board finds no reason to believe that the Judge did not properly weigh the evidence or that he failed to consider all the evidence of record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). We have considered the totality of Applicant's arguments on appeal and find no error in the Judge's ultimate conclusions regarding mitigation. The only record evidence submitted by Applicant was his answer to the SOR. In the answer, there was no proffer of evidence regarding Applicant's medical problems, and no specific evidence regarding how his wife's job layoff affected the family finances. The Judge made specific mention of the latter factor in his decision.

There is no record evidence available to Applicant sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board