

KEYWORD: Guideline F

DIGEST: The Judge gave Applicant additional time in which to submit documents after the close of the record. Delay in Applicant’s receipt of hearing transcript did not impair his ability to submit documents or to prepare his appeal. Applicant did not rebut the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 14-01284.a1

DATE: 04/06/2015

DATE: April 6, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-01284
)	
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 15, 2014, 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 22, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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 he was denied due process 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 employed by a Defense contractor. He has worked for Defense contractors since 2007. He retired from the Air Force in the grade of E-6 and has held a security clearance since 1987. Applicant's SOR alleges several delinquent debts, plus Applicant's failure to file his 2012 Federal income taxes in a timely manner.¹ The debts are for credit cards and a repossessed vehicle.

Applicant's problems began following his retirement from the Air Force, when he and his wife separated. He stopped paying his debts during this period, and later, when he tried to resolve them, he concluded that he was too far behind to succeed. He did nothing about his debts until late 2013, when he received interrogatories from DOHA. He hired a debt relief company to assist him and has paid off five non-SOR debts totaling about \$1,378. The Judge also found that Applicant had resolved, or was resolving, three of the SOR debts. However, he also found that Applicant had not demonstrated resolution of the remaining ones. Applicant has \$2,097 each month after expenses.

The Judge's Analysis

The Judge cited to evidence of Applicant's marital separation, which had an effect on his financial problems. He stated, however, that most of these problems occurred between 2007 and 2010, yet Applicant took no meaningful action until 2014, when Applicant's debts became an issue in his clearance adjudication. The Judge concluded that Applicant had not demonstrated responsible action regarding his debt situation, viewed as a whole. The Judge took note of Applicant's having hired a debt resolution company and that some of his debts have been resolved. He stated, however, that the "higher-balanced" debts were still ongoing and that Applicant had not addressed his tax obligations.

In the whole-person analysis, the Judge made note of Applicant's military service and the circumstances underlying his indebtedness. He stated, however, that Applicant had done little to resolve his debts and lacked a meaningful track record of debt management.

Discussion

¹The Judge found that Applicant had not filed his Federal tax returns in 2011 or in 2012 and that he owed about \$20,000 in back taxes. However, because the failure to file in 2011 and the tax delinquencies themselves were not alleged, he considered this evidence on the limited question of mitigation and the whole-person analysis. Decision at 4-5, note 14.

At the end of the hearing, the Judge gave Applicant additional time in which to provide evidence. Applicant states that he did not receive a transcript until mid-February.² He contends that he should have had access to the transcript before the close of the record, which would have facilitated his effort to provide additional evidence. The Judge stated on the record that he was giving Applicant additional time to provide information about his Federal income tax filings for the preceding two or three years. Tr. at 79-81. Applicant provided tax returns for tax years 2011 and 2012. Applicant Exhibits K and L. He submitted other documents regarding his efforts to resolve his debts. There is no reason to believe that a reasonable person in Applicant's situation would not have understood what information he was to provide, even without a copy of the transcript. Moreover, the Appeal Board provided Applicant his copy of the transcript in time to prepare his Appeal Brief. Although the delay in Applicant's receipt of the transcript was clearly undesirable, on this record we find no reason to conclude that the delay impaired Applicant's ability to exercise his rights to present evidence or to submit an appeal.

Applicant's brief cites to such things as his military service, family circumstances, etc. His arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-03415 at 3-4 (App. Bd. Jul. 25, 2014). The Judge made findings about the evidence Applicant has cited and discussed it in the Analysis section of the Decision. We conclude that the Judge's whole-person analysis complied with the requirements of the Directive, in that he discussed Applicant's security-significant circumstances in light of the evidence as a whole. *See, e.g.*, ISCR Case No. 12-01578 at 5 (App. Bd. Sep. 24, 2014).

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."

²Applicant's brief cites to matters outside the record. As a general rule, we do not consider new evidence on appeal. We have done so, however, on threshold issues of jurisdiction or due process. *See, e.g.*, ISCR Case No. 14-01239 at 2 (App. Bd. Oct. 23, 2014). Therefore, we are considering Applicant's new evidence to the extent necessary to resolve his due process claim.

Order

The Decision is **AFFIRMED**.

Signed: Michal Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board