

KEYWORD: Guideline F

DIGEST: The Appeal Board cannot consider new evidence. The principal of administrative finality requires that, absent a showing that an applicant was denied an opportunity to present evidence, there is no basis to reopen a record for the presentation of additional evidence. Adverse decision affirmed.

CASE NO: 14-02480.a1

DATE: 06/01/2015

DATE: June 1, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-02480
)	
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 20, 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 that the case be decided on the written record. On March 20, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher 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: whether the Judge's adverse decision is arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following findings: Applicant is 53 years old. He had four delinquent debts. One was a deficiency amount from a repossessed vehicle in the sum of \$14,658. He also had a telecommunications debt in the amount of \$895, a child support debt in the amount of \$427, and a collection account debt in the amount of \$166. Applicant paid all of the debts except for the arrearage on the repossessed vehicle. He purchased a truck in 2005 and financed at a high interest rate because of a poor credit record. The next year, he experienced financial difficulties because he helped his daughter and his girlfriend with college expenses. He consented to a voluntary repossession because he could not make the payments. He attempted to set up a payment plan with the creditor, but the creditor wanted a one-time payment in an amount that Applicant could not afford. The account has been purchased by a new creditor, but Applicant has not contacted the new creditor about payments. The last payment on the account was in 2008 and it remains unresolved. Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.

The Judge concluded: Applicant has a delinquent debt that remains unpaid or unresolved. He did not provide sufficient evidence to show that his debts are unlikely to recur. Although he acted responsibly by paying three of the smaller debts, he failed to act responsibly in dealing with the remaining large debt. He presented no evidence of financial counseling. Although he paid the three small debts, there is no clear evidence that Applicant's financial problems are being resolved or are under control because the largest debt remains unpaid. Despite some mitigation, Applicant's financial status remains a concern. He has not shown a track record of financial stability.

Applicant asserts that the Judge erred because his decision was based on credit information from 2014, even though his decision was made in 2015. He feels that the decision was unfair because it was made with no further investigation up to the time of the decision.¹ He states that the issue of the outstanding debt has been addressed and payment arrangements are being made on a monthly basis to clear the account. Applicant has not established error on the part of the Judge.

Applicant's representations regarding payment arrangements for the outstanding delinquent account constitute additional evidence that goes beyond the record evidence in the case. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

Applicant argues that his case should have been decided using more current information, although he fails to articulate with any specificity what additional information favorable to him

¹Applicant's appeal statement is ambiguously worded. One possible interpretation is that he asserts the Appeal Board should have been part of the investigative process. The jurisdiction of the Board is delineated by the Directive. The Board has no fact-finding authority. *See, e.g.*, ISCR Case No. 04-11414 at 3 (App. Bd. Mar. 5, 2007). It therefore lacks the authority to conduct investigations. Another possible interpretation of Applicant's appeal assertions is that the Judge should have considered facts taking place up to the time of the decision. The Board will address this assertion in the main body of its decision.

would have come into play or how that information would be made part of the record. Applicant's assertion requires the Board to address the legal principle of finality. This principle is applicable with respect to claims that circumstances have changed after the hearing was conducted or, in this case, after the record evidence was closed. The Supreme Court has recognized that the administrative consideration of evidence always creates a gap between the time the record is closed and the time the administrative decision is promulgated, and that attempts to eliminate the gap would create a situation where the administrative process might never be consummated. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554-555 (1978). The Board has followed this reasoning because there must be some reasonable degree of administrative finality in DOHA adjudications. *See, e.g.*, ISCR Case No. 03-17114 at 3 (App. Bd. Nov. 29, 2004). Absent a showing that Applicant was denied a reasonable opportunity to present evidence for the Judge to consider in his case, there is no basis for reopening the proceedings to expand the record. *See, e.g.*, ISCR Case No. 03-22643 at 4 (App. Bd. Jun. 24, 2005). Here, Applicant has made no such showing.

Applicant states that he has resolved three of the four debts at issue in the case. The Board construes this statement as an assertion that the Judge should have considered the case mitigated. The Judge made findings about all of Applicant's debts and acknowledged that three of them had been satisfied. However, given the size of the remaining debt, and the paucity of evidence relating to Applicant's efforts to address it, the Board concludes that the Judge's overall decision is supported by the record. Applicant has not rebutted the presumption that the Judge considered all the evidence in the record or that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 08-06438 at 2 (App. Bd. Aug. 4, 2009).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. "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."

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan
Michael 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