

KEYWORD: Guideline F

DIGEST: Applicant submitted substantial new evidence which the Board cannot consider.

CASENO: 14-03286.a1

DATE: 11/20/2015

DATE: November 20, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-03286
)	
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 12, 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 decision

on the written record. On August 31, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge considered all of the evidence in the record, with the result that his adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Government contractor. He served on active duty with the U.S. military from 1990 until 1996 and in the Reserves from 1998 until 2002. He has attended college but has not received a degree. Twice divorced, Applicant has three children, ages 19, 20, and 21. Applicant first received a DoD security clearance in 1998, although the record is not clear as to whether he has held one since.

Applicant's SOR lists several delinquent debts, three of which the Judge resolved against Applicant. These were for a tax debt to his state, child support obligations, and the balance due after a foreclosure sale of his house. Applicant stated that he had filed his Federal tax return for the tax year in question but had forgotten to file one for his state. In his SOR answer, Applicant stated that he was in the process of filing an amended state income tax return and that he intended to pay his tax debt. He presented no evidence to support this claim; a credit report shows that the state released a tax lien. Applicant's pay statement shows that the state is withholding \$157 a month for tax purposes.

Applicant attributed his child support arrearage to his having failed to increase the payments mandated in his divorce decree as his income grew. In 2012, a court ordered withholding of \$650 a month from Applicant's pay. Applicant disclosed that, due to divorce-related expenses and child support obligations, he could not pay his monthly mortgage. His home went into foreclosure, and Applicant claimed that he understood that he owed nothing further. Applicant stated that he had contacted the creditor to resolve the balance alleged to be owed but heard nothing back. Applicant's credit report shows that this debt is in dispute, although Applicant presented nothing to substantiate the basis for the dispute. Applicant's SOR alleged two "service provider" accounts that Applicant paid. Decision at 3.

Applicant has a net monthly income of a little over \$3,300. He provided no information about his monthly expenses, whether he had received financial counseling, or whether he has a budget that he follows. Applicant's 2015 credit report shows several accounts that had been paid after having become delinquent or having been charged off. It also shows numerous accounts that are in good standing. The credit report also shows an unpaid credit card debt and an unpaid medical debt of about \$10.

The Judge's Analysis

The Judge entered favorable findings regarding the two “service provider” debts referenced above. He entered adverse findings for the remainder—the tax debt, the child support arrearage, and the mortgage debt. He found that these debts were ongoing and that Applicant had provided no evidence to corroborate his claims about debt resolution or that he had filed his state tax return. The Judge also stated that, except for a pay statement, Applicant had provided no evidence of his current financial situation. Neither had Applicant provided evidence of financial counseling or that he follows a budget.

Discussion

Applicant’s submission on appeal includes a substantial amount of information that is not contained in the record, including some documents that post-date the Judge’s decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant cites to record evidence that addresses the circumstances of his debts and his efforts to resolve them. The Judge made findings about this evidence. However, his conclusion that Applicant provided insufficient evidence about his financial situation and his efforts to resolve his debts constitutes a reasonable interpretation of the record. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-08412 at 2 (App. Bd. Sep. 11, 2015).

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.”

Order

The Decision is **AFFIRMED**.

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

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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