

KEYWORD: Guideline F

DIGEST: Applicant received adequate notice that, if he wanted the Judge to consider matters beyond those contained in the FORM, he needed to submit those matters. Applicant did not submit a response to the FORM. From our review of the record, we conclude that Applicant has failed to establish a *prima facie* case that he was denied due process. Adverse decision affirmed.

CASENO: 14-05290.a1

DATE: 06/21/2017

DATE: June 21, 2017

In Re:)	
)	
-----)	ISCR Case No. 14-05290
)	
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 December 5, 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 March 29, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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 the Judge denied him due process and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the Judge's decision.

The Judge's Findings of Fact

In his Answer to the SOR, Applicant admitted the eight delinquent debts totaling about \$28,000 and stated some of the debts were derived from his second marriage, which resulted in a separation in 2013 and divorce in 2015. During a background investigation, he indicated that he was paying certain debts, but did not provide proof of those payments. His ex-wife filed bankruptcy in 2013 and her debts were discharged in 2014. For reasons not presented in the file, he did not join the bankruptcy proceeding.

Applicant pays his current debts. He has not made payments on the SOR debts and believes his ex-wife's bankruptcy applies to his financial obligations. Since Applicant elected a decision on the written record, the Judge noted that he was unable to inquire into specifics related to Applicant's debts, his current finances, and the likelihood of future financial difficulties.

The Judge's Analysis

Applicant has a history of financial difficulties. He failed to show that his ex-wife's bankruptcy discharge applies to him. His divorce and loss of family income are mitigating factors, but he failed to address the debts upon his separation and divorce. He has not shown that he acted responsibly to resolve his financial obligations. The delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Discussion

Applicant contends errors occurred in the processing of his security clearance. First, he notes that his security clearance review began in 2013 and that he repeatedly had to submit information presumably to security clearance adjudicators. He contends the adjudication process took too long and was improperly conducted. However, we have no jurisdiction to rule on these matters. *See, e.g.*, ISCR Case No. 11-12730 at 2 (App. Bd. Sep. 4, 2013) (Appeal Board has no jurisdiction over delays in the processing of security clearances) and ISCR Case No. 14-04186 at 3-4 (App. Bd. Oct. 28, 2015) (Appeal Board has no authority to rule on the manner in which officials conduct security clearance investigations).

Applicant also contends the processing of his case led to a possible loss of evidence that contradicts the Judge's conclusions.¹ In his Answer to the SOR, he notes that the "Original

¹ In the appeal brief, Applicant states his earlier submissions included his clear and sincere intent to repair his financial standing by contacting and working with creditors as well as a proposed payment schedule to repay older debts. The Appeal Board has long held that a statement of intent to pay off debts in the future is no substitute for a track record of debt repayment or other responsible approaches to debt resolution. *See, e.g.*, ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009). Applicant also states an audit of the proposed repayment schedule would show his resolve to settle his outstanding debts; however, the Appeal Board has no fact-finding powers. *See, e.g.*, ISCR Case No. 14-02394 at 3 (App.

submission” was sent on December 24, 2014, and a “Revised submission” was sent on February 17, 2017. The Answer neither references any attachments or enclosures nor does it indicate any documents were previously submitted or may be missing. Additionally, we note that Department Counsel’s File of Relevant Material (FORM) was mailed to Applicant on May 17, 2016. The forwarding letter advised Applicant that the FORM consisted of relevant material that will be submitted to an Administrative Judge so that a security clearance determination could be made in his case. Applicant received the FORM on May 30, 2016, and was given 30 days from its receipt to submit any objections or additional information that he wished to be considered. The FORM also advised that, “[i]f you do not file any objections or submit any additional information . . . , your case will be assigned to an Administrative Judge for a determination *based solely on this File of Relevant Material.*” [Emphasis added]. FORM at 3. Applicant received adequate notice that, if he wanted the Judge to consider matters beyond those contained in the FORM, he needed to submit those matters. Applicant did not submit a response to the FORM. From our review of the record, we conclude that Applicant has failed to establish a *prima facie* case that he was denied due process. *See, e.g.*, ISCR Case No. 15-02933 at 2 (App. Bd. Sep. 23, 2016).

Applicant contends that the Judge erred in concluding that he has a history of debt issues. He argues the Judge’s conclusion is an anecdotal comment that is not supported by the evidence and points to his excellent credit status prior to his divorce. This contention lacks merit. The Judge correctly found that Applicant admitted that he had eight delinquent debts totaling about \$28,000 and that some of those debts arose from his second marriage, which resulted in a separation in 2013 and divorce in 2015. We conclude the Judge’s challenged conclusion is sustainable because it was based on substantial evidence, or constituted a reasonable characterization or inference that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). The balance of Applicant’s arguments amounts to a disagreement the Judge’s weighing of the evidence, which is not sufficient to establish that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

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 national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board