

KEYWORD: Guideline F

DIGEST: The Judge left the record open for over three weeks. The Judge found that Applicant ultimately submitted nothing. Although Applicant has provided us with documents that she claimed she submitted, she did not supply any evidence to show that she either mailed the documents or submitted them electronically. We resolve this issue adversely to Applicant. Adverse decision affirmed.

CASENO: 15-05097.a1

DATE: 09/26/2017

DATE: September 26, 2017

|  |                                 |                        |
|--|---------------------------------|------------------------|
| In Re: _____<br><br>Applicant for Security Clearance | )<br>)<br>)<br>)<br>)<br>)<br>) | ISCR Case No. 15-05097 |
|--|---------------------------------|------------------------|

**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 February 29, 2016, 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 July 19, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gina L. Marine 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 she submitted evidence that was not entered into the record; whether the Judge's findings of fact contained errors; 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 has worked for a Defense contractor since 2002. She previously worked as a civilian employee of one of the military services. She has held a security clearance since the 1980s.

Applicant's SOR lists several delinquent debts for medical accounts; four accounts resulting from apartment rental agreements; a federal tax lien for a little over \$29,000; two state tax liens; a student loan; an automobile repossession; and two other charged-off/collection accounts. The apartment debts resulted from late payments and from Applicant's having terminated a lease early in order to care for her ailing father. She attributed her tax problems to inadequate withholding by her employer. She hired a firm to assist in resolving her tax problems and submitted a letter from the firm stating that they expected to receive IRS approval of a repayment plan. At the hearing, Applicant confirmed that the IRS had not yet acted on the proposed plan. Applicant entered into a rehabilitation agreement to pay \$181 a month toward satisfaction of the student loan. In addition to her delinquent debts, Applicant's SOR alleges a Chapter 7 bankruptcy filing in 2005 and her misuse of a company-provided travel card two years later. She was found guilty of credit card fraud in 1984 and for writing a bad check in 1997.

Applicant attributed her problems to underemployment and to financial assistance that she provides to her adult children. She also experienced a salary reduction in 2013 and 2014 due to contracting issues. She has received some credit counseling from her current employer, based upon which she created a spreadsheet to assist in managing her finances. Although Applicant testified that her financial condition was improving, the Judge noted two additional collection debts that were not alleged in the SOR. Applicant took a cruise in 2014 and purchased a new car a year later. She makes about \$3,600 a month and uses any funds left over after expenses to pay down debt. Though noting Applicant's claims of debt reduction, the Judge found that she did not provide corroborating evidence.

### **The Judge's Analysis**

The Judge concluded that none of the mitigating conditions fully applied to Applicant's delinquent debts. For example, though noting circumstances outside her control that affected her financial problems, the Judge stated that Applicant did not demonstrate responsible action in regard to them. She concluded that Applicant had not demonstrated a good-faith effort to pay her debts or to show that her financial problems are under control, citing to a paucity of corroborating evidence. The Judge did resolve some of the allegations in Applicant's favor, including a state tax lien for nearly \$6,000 and the two convictions from the 1980s and 1990s. However, for the balance of the allegations, the Judge concluded that Applicant had not met her burden of persuasion as to mitigation.

### **Discussion**

Applicant contends that she submitted documentation to the Judge that was not considered. She has attached to her brief documents that she claims that she submitted. Her arguments include matters from outside the record, which we generally are not permitted to consider. Directive ¶ E3.1.29. However, we will consider new evidence insofar as it bears upon threshold issues such as jurisdiction or due process.

At the close of the hearing, the Judge left the record open for over three weeks to enable Applicant to submit additional documentary evidence. Tr. at 88. At Applicant's request, the Judge extended the deadline for submission of evidence for an additional six weeks. Email from Judge to Applicant, dated March 20, 2017. However, the Judge found that Applicant ultimately submitted nothing. Decision at 2; Email from Department Counsel to Judge, dated July 17, 2017. Although Applicant has provided us with documents that she claimed she submitted, she did not supply any evidence to show that she either mailed the documents or submitted them electronically. Based on the record before us, we conclude that Applicant has not made a *prima facie* showing that she actually submitted documentary evidence that was not received by the Judge. We resolve this issue adversely to Applicant.

Applicant argues that she had resolved her debts. She states that she did not owe four debts resulting from her rental agreement but only one. To the extent that Applicant is contending that the Judge's findings contained errors, we conclude that the Judge's material findings are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 14-04435 at 4 (App. Bd. Mar. 13, 2017). Applicant has not cited to any harmful error in the Judge's findings of fact.

Applicant cites to favorable evidence, such as her having held a clearance for many years without incident or concern and her effort to arrive at a payment plan with the IRS. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017). Applicant's remaining arguments constitute, in effect, a disagreement with the Judge's weighing of the evidence. However, such a disagreement is not 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. 15-08842 at 3 (App. Bd. Feb. 14, 2017). Among other things, Applicant's tax delinquencies raise a reasonable concern that she has trouble following governmental rules and regulations. *See, e.g.*, ISCR Case 14-06808 at 2 (App. Bd. Nov. 23, 2016). Even if Applicant had demonstrated that she had resolved many of her delinquent debts, the Judge could still consider the circumstances underlying those debts for what they may reveal about her judgment and reliability. *See, e.g.*, ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015).

The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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