

KEYWORD: Guideline F

DIGEST: Applicant’s appeal submission asserts matters from outside the record. It includes documents that post-date the Judge’s decision. We cannot consider new evidence on appeal. Adverse decision affirmed.

CASENO: 16-00695.a1

DATE: 06/02/2017

DATE: June 2, 2017

In Re:)	
)	
-----)	ISCR Case No. 16-00695
)	
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 June 10, 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 March 15, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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’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 his current employer, a Defense contractor, since 2006. He served on active duty in the military from 1980 until 1984 and in the reserves from 1985 until 2003. Applicant was unemployed from June 2006 until August 2006. He received a college degree in 2007. Applicant divorced his wife in 1999. During the course of the marriage, he accumulated several delinquent debts. His debts were discharged in Chapter 7 bankruptcy in 1992.

In 2005, he enrolled in on-line college classes, financing the costs through student loans. He fell behind on his debts. He also assumed responsibility for the care of his aged mother, who had dementia, and for the mother of his girlfriend, who had undergone knee surgery. Upon a lawyer's advice, he stopped paying on his student loans. He petitioned for Chapter 7 bankruptcy protection in 2013, which relieved him of \$28,000 in consumer debt. However, the discharge did not affect his student loans.

For several months in 2016, the student loan creditor garnished Applicant's wages, although the creditor did not pursue garnishment after receiving a financial statement from Applicant. Applicant is still in default on these loans. He has engaged in conversations with the creditor and has attempted to establish a payment plan, although the creditor has not agreed to accept such a course of action. Applicant has provided no documentary evidence showing attempts to resolve the student loans. He has not provided evidence of financial counseling.

The Judge's Analysis

The Judge noted Applicant's unemployment and his care for his mother and his girlfriend's mother. However, because Applicant provided no corroborating evidence of his claims of debt resolution, the Judge concluded that he had not demonstrated responsible action. The Judge noted character references that Applicant had submitted but concluded that the record did not support a favorable decision.

Discussion

Applicant's appeal submission asserts matters from outside the record. It includes documents that post-date the Judge's decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant reiterates his evidence about his care and support of his mother and his girlfriend's mother. He discusses the difficulties he has had coming to an agreement with the lender and argues that he has met his financial obligations. He argues that the 14 days that the Judge held the record open after the hearing was insufficient for him to complete debt consolidation and submit evidence of payments. Applicant's appeal brief is not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it enough 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. 13-00502 at 3 (App. Bd. Mar. 7, 2017). The Judge's decision to leave the record open was discretionary. Applicant was on notice of the Government's security concerns since receipt of the

SOR.

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board