

KEYWORD: Guideline F

DIGEST: Applicant argues that documents he submitted did not make it into the record. From our review of the record, we conclude that Applicant has failed to establish a *prima facie* case that he provided documents that did not make it into the record or that he was denied due process. Adverse decision affirmed.

CASENO: 15-04027.a1

DATE: 03/06/2018

DATE: March 06, 2018

In Re:	)	
	)	
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	)	
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<sup>1</sup> a security clearance. On December 21, 2015, 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 November 1, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 Applicant was denied due process and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Finding of Fact and Analysis**

The SOR alleged that Applicant had 14 delinquent debts totaling about \$30,000. Credit reports in the record established the alleged debts. Applicant’s response to the File of Relevant Material (FORM) argues all of the alleged debts, except a student loan, were not owed by him and the credit reports are incorrect. In making that argument, he highlighted incorrect date of birth entries and variations of his name in some credit reports.

The Judge found in favor of Applicant on a student loan that he resolved and against him on the remaining debts because no evidence was submitted to establish they were resolved or reduced. Applicant provided no independent evidence that all of the debts were not his responsibility. In his security clearance application (SCA) of April 2013, Applicant listed several delinquent debts, including one for a repossessed vehicle, another vehicle debt, a cable television bill, and two credit card debts. No evidence was submitted that the debts listed in the SCA were not the same as some of those listed in the SOR. Applicant did not mitigate the security concerns arising from the alleged debts.

### **Discussion**

In his appeal brief, Applicant argues that documents he submitted did not make it into the record. He claims that he submitted letters from a city and a community college that reflected his personal information was stolen.<sup>2</sup> Those letters are not contained in the record. We note Applicant made two documentary submissions that are in the record, *i.e.*, his responses to the SOR and the FORM. In his response to the SOR, he specifically listed the documents that he provided. Letters

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<sup>1</sup> Applicant’s last name listed in the above caption is different from that listed in the Judge’s decision. In his appeal brief, he stated that his last name was incorrectly listed in the decision. We note, however, that the last name listed for him in both the SOR and the Decision matches the last name he provided in his SCA.

<sup>2</sup> Applicant also claims that he submitted his social security card, which is not in the record. His correct social security number is not an issue in this case and is reflected in a Government document in the record.

from the city or community college were not listed in his SOR response. In that document, however, he did refer to a letter from the county informing him that his personal information was stolen, and he noted he contacted the city for assistance. While his FORM response does address the documents he was submitting, he did not identify those documents with the same specificity as he did in his SOR response. His FORM response makes no mention that he was providing letters from the city or community college. From our review of the record, we conclude that Applicant has failed to establish a *prima facie* case that he provided documents that did not make it into the record or that he was denied due process. *See, e.g.*, ISCR Case No. 15-02933 at 2 (App. Bd. Sep. 23, 2016). Moreover, even if Applicant submitted letters from the city and community college that did not make it into the record, such an error was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). In this regard, we note that Applicant provided letters from the state comptroller and the U.S. Office of Personnel Management reflecting that his personal identifiable information had been compromised. Similar information from the city or community college would have merely been cumulative evidence.

Applicant also argues that, except for his student loan, the debts alleged in the SOR were not his responsibility, but were the result of identity theft. This argument is not persuasive. As the Judge noted, Applicant disclosed delinquent debts in his SCA and explained why he became delinquent on those debts. At least three of the debts disclosed in his SCA match debts alleged in the SOR. The matching debts include a vehicle loan placed for collection for about \$14,300 (SOR ¶ 1.f), a charged-off vehicle loan for about \$2,300 (SOR ¶ 1.h), and a cable television bill for about \$450 (SOR ¶ 1.n). The names of the creditors and account numbers that Applicant listed for those debts in his SCA match entries in credit reports from which the SOR allegations pertaining to those debts were derived. Additionally, the amounts that he listed for those debts in his SCA are very similar to those alleged in the SOR. The record contains substantial evidence to establish that the debts in SOR ¶ 1.f, 1.h, and 1.n were Applicant's responsibility. Moreover, those debts are sufficient to support the Judge's adverse clearance decision. Applicant's inconsistent statements about those debts undermines his claim that other debts were the result of identity theft. In short, the Judge found that credit reports in the record established the alleged the debts, and those debts were Applicant's responsibility. Applicant has failed to establish the Judge erred in making those findings.

Applicant further argues the Judge did not consider all the evidence or mis-weighed the evidence. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the evidence in the record nor 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. 16-00844 at 2 (App. Bd. Jul. 25, 2017).

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: Charles C. Hale

Charles C. Hale  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board