

KEYWORD: Guideline F

DIGEST: Applicant raises the issue of the absence of a payment agreement that was discussed in the Judge’s original decision. That issue was resolved by remanding the first decision so the Judge could consider the missing documents. Applicant also offers explanations about his debts that are not contained in the record and constitute new evidence. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29. Adverse decision affirmed.

CASENO: 16-01238.a2

DATE: 02/23/2018

DATE: February 23, 2018

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|                                  | ) |                        |
| In Re:                           | ) |                        |
| -----                            | ) | ISCR Case No. 16-01238 |
|                                  | ) |                        |
| 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 20, 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 decision on the written record. On July 14, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

On September 26, 2017, we remanded the case. On October 26, 2017, the Judge issued a Decision on Remand, denying Applicant’s request for a security clearance. Applicant again appealed pursuant to the Directive.

Applicant raised the following issue in his latest appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s Decision on Remand.

The SOR alleged that Applicant had two judgments against him totaling about \$7,600, a delinquent medical debt for \$148, and a charged-off debt for about \$6,500. In the original decision, the Judge found for Applicant on the charged-off debt because he was only an authorized user of that account and against him on the other debts. The Judge noted that Applicant claimed he had a payment agreement for the two judgments, but did not provide any documents supporting that claim. Although Applicant claimed the medical debt was opened without his knowledge, the Judge noted that Applicant did not dispute the debt with the creditor or credit bureaus.

We remanded the original decision to the Judge because Applicant claimed he submitted documents regarding a payment agreement for the two judgments with his SOR answer. In the Decision on Remand, the Judge stated that he reopened the record to provide Applicant an opportunity to submit any documents that he claimed to have submitted with his SOR answer. Applicant responded by submitting a packet of documents, including a payment agreement (unsigned by Applicant or his spouse) for the two judgments, which the Judge marked and entered into the record. The Judge indicated that he assumed Applicant signed the payment agreement, but also noted that Applicant did not submit any documentary evidence of payments under the plan. The Judge again denied Applicant’s request for a security clearance by essentially adhering to his analysis of the disqualifying and mitigating conditions in the original decision.

In his latest appeal brief, Applicant again raises the issue of the absence of the payment agreement as a reason for the Judge’s original adverse decision. This issue, however, was resolved by remanding the original decision so that the Judge could consider the missing documents.

Applicant also contends that he did not provide proof of payments under the payment plan because he made those payments by certified check and only had a few emails documenting those payments. He further explained that he encountered serious medical problems that limited his ability to make the payments for about four months. Soon after he returned to work, he requested

reinstatement of the payment plan, but discovered the creditor had taken action to garnish his pay, and he was attempting to modify the amount of the monthly garnishment. His explanation about these matters are not contained in the record and constitute new evidence that the Board cannot consider on appeal. Directive ¶ E3.1.29.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. Applicant has failed to establish that the Judge committed any harmful error. 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