

KEYWORD: Guideline F

DIGEST: Applicant’s arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 16-01559.a1

DATE: 02/12/2018

DATE: February 12, 2018

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 16-01559
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**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 September 1, 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 October 12, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 and Analysis**

Applicant's SOR listed several delinquent debts, including two tax liens for about \$15,000 and \$6,600 respectively, four judgments, medical debts, etc. It also alleged that Applicant failed to file his tax returns from at least tax year 2010. He has also failed to file or pay taxes for 2011 and cannot recall if he filed returns for 2010, 2012, or 2013. He intends to file his returns for 2014. Applicant attributed his financial problems to medical bills, job loss, and reduction in salary. Although the File of Relevant Material advised Applicant that there was no corroborating documentation regarding the SOR allegations, he did not make a response.

Though noting circumstances outside Applicant's control that affected his financial condition, the Judge cited to Applicant's failure to provide documentary evidence about his efforts to resolve the concerns raised in the SOR. He stated that there is insufficient evidence that Applicant's problems are being resolved.

### **Discussion**

Applicant cites to his medical problems and his period of unemployment without health insurance. He argues that he is trustworthy and that his eligibility for a clearance should not rest upon only a difficult portion of his life, thereby contending that the Judge did not properly apply the whole-person concept. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record, nor are they 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. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

Applicant's brief includes references to matters from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Given the record that was before him, we conclude that the Judge did not err in his whole-person analysis, in that he considered the totality of the record evidence. *See, e.g.*, ISCR Case No. 15-03592 at 2 (App. Bd. Jun. 14, 2017). In a DOHA proceeding, it is the applicant's responsibility to present evidence in mitigation, extenuation, explanation, etc. Directive ¶ E3.1.15. Applicant was placed upon sufficient notice that the record as it stood lacked documentary evidence to show that the allegations in the SOR were being resolved, yet he submitted nothing. The Judge's conclusion that Applicant had failed to meet his burden of persuasion as to mitigation is supportable.

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 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: Charles C. Hale

Charles C. Hale  
Administrative Judge  
Member, Appeal Board